

No. 2503

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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Transcript of Record.  
(IN THREE VOLUMES.)

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A. B. HAMMOND,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

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VOLUME I.

(Pages 1 to 256, Inclusive.)

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Upon Writ of Error to the United States District Court  
of the Northern District of California,  
Second Division.

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Filed

NOV 11 1914

E. D. Mandillon.



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the Circuit Court of the United States, Ninth  
Circuit, Northern District of California.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

A. B. HAMMOND,

Defendant.

### **Complaint.**

Plaintiff complains of the defendant and for cause of action alleges:

#### **I.**

The defendant, A. B. Hammond, is a citizen of the State of California, and a resident and inhabitant of the Northern Judicial District of said State.

#### **II.**

That from the time of its manufacture, until the appropriation, use, sale and conversion of the same, as hereinafter alleged, the plaintiff was the owner of certain lumber, to wit, 21,185,410 feet, board measure of lumber, hereinafter mentioned.

That prior to the sawing and manufacture of the said lumber the same was timber standing and growing upon the following described public lands of the United States, to wit:

Sec. 2, T. 11 N., R. 16 W.,

Sec. 12, T. 11 N., R. 16 W.,

Sec. 14, T. 11 N., R. 16 W.,

S.  $\frac{1}{2}$  of SE.  $\frac{1}{4}$ , NE.  $\frac{1}{4}$  of SE.  $\frac{1}{4}$ , N.  $\frac{1}{2}$  of NW.

$\frac{1}{4}$ , NW.  $\frac{1}{4}$  of NE.  $\frac{1}{4}$  of Sec. 10, T. 11 N.,  
R. 16 W.,



Sec. 6, T. 11 N., R. 15 W.,  
 Sec. 8, T. 11 N., R. 15 W., [1\*]  
 Sec. 18, T. 11 N., R. 15 W.,  
 Sec. 20, T. 11 N., R. 15 W.,  
 Sec. 22, T. 11 N., R. 15 W.,  
 Sec. 26, T. 11 N., R. 15 W.,  
 NW.  $\frac{1}{4}$ , Sec. 18, T. 13 N., R. 14 W.,  
 NW.  $\frac{1}{4}$ , Sec. 2, T. 14 N., R. 14 W.,  
 SE.  $\frac{1}{4}$ , Sec. 8, T. 14 N., R. 14 W.,  
 E.  $\frac{1}{2}$  and S.  $\frac{1}{2}$  of SW.  $\frac{1}{4}$ , Sec. 22, T. 14 N., R.  
 14 W.,  
 SE.  $\frac{1}{4}$ , Sec. 28, T. 14 N., R. 14 W.,  
 NW.  $\frac{1}{4}$ , Sec. 34, T. 14 N., R. 14 W.,  
 S.  $\frac{1}{2}$ , Sec. 18, T. 14 N., R. 15 W.,  
 S.  $\frac{1}{2}$ , Sec. 20, T. 14 N., R. 15 W.,  
 N.  $\frac{1}{2}$  of NE.  $\frac{1}{4}$ , Sec. 26, T. 14 N., R. 16 W.,  
 NW.  $\frac{1}{4}$ , Sec. 28, T. 14 N., R. 16 W.

That the township and range used in the foregoing description are parts of and in accordance with the United States system of surveys based upon what is known as the "Montana Meridian," and to make the said description complete the words "Montana Meridian" are to be taken as following the range numbers as given in the foregoing description. All said lands are located in the State of Montana.

That this plaintiff was at all times herein mentioned the owner of all the timber cut and removed from said lands.

### III.

That the defendant herein during the year 1885 and from said time down to and including the year

\*Page-number appearing at foot of page of original certified Record.

1894, the exact time or times plaintiff being unable more particularly to state, entered upon the aforesaid lands and cut down, felled and removed and caused to be cut down, felled and removed timber that had been standing and growing upon said lands.

That said timber was sufficient in quantity so that when manufactured into lumber the same made said 21,185,410 feet, [2] board measure of lumber. That after being so cut down, felled and removed the said defendant manufactured and caused to be manufactured the same into 21,185,410 feet, board measure, of lumber herein mentioned. That said defendant in committing the said acts in this paragraph last named acted as the general manager in charge of and directing all of the business of a certain corporation, incorporated, organized and existing under and by virtue of the laws of the State of Montana, to wit, a corporation known as "The Montana Improvement Company, Limited," and a corporation known as "The Black Foot Milling and Manufacturing Company."

#### IV.

That between January 1st, 1885, and January 1st, 1895, the exact time or times plaintiff being unable more particularly to state, the defendant appropriated, used and sold, and caused to be appropriated, used and sold, by the said corporations and converted and caused to be converted to his own use and the use of the said corporations the whole of the said lumber hereinbefore described. Whereby, the whole of the said lumber was lost to this plaintiff.

## V.

That the defendant had not nor had said corporations any right whatever to said lands, or to said timber, or to the timber cut or removed therefrom, or to the said lumber which was so manufactured from the said timber.

## VI.

That the value of the said timber last described was One Dollar (\$1) per thousand feet, board measure, while standing; that the value of the same after being felled and prepared for sawing into lumber was Five Dollars (\$5) per thousand feet, board measure, and that the value of the same after being manufactured into lumber was Ten Dollars (\$10) per thousand feet, board measure. [3]

## VII.

That the acts of the said defendant in cutting and removing the said timber from this plaintiff's lands, and in manufacturing the same into lumber, and in appropriating and using said lumber, as hereinbefore alleged, wronged, damaged and injured this plaintiff in the sum of \$211,854.10, the value of the said lumber after being manufactured from said timber as aforesaid.

## VIII.

That the acts of the said defendant hereinbefore complained of were all committed wilfully and knowingly and with full knowledge that the said timber and lumber so used and appropriated were the property of this plaintiff, and that said defendant had not nor had the said corporations any right whatsoever thereto.



IX.

That the amount of the said timber so cut from this plaintiff's lands is given in this complaint as correctly and accurately as circumstances will permit. No measurement of the said manufactured lumber can be obtained by this plaintiff, but that the facts in regard thereto are in the possession of defendant. That the estimate of the said timber and lumber so taken from the plaintiff's lands is ascertained and stated in this complaint by actual stumpage measurement upon the ground. Said timber was also manufactured into lumber by defendant at mills operated and owned by the said corporations and conducted and managed by the said defendant.

That said defendant has full knowledge as to the manner in which the said cutting occurred the same having occurred under his immediate direction and control, and as to the manner in which and the times at which the said lumber was so manufactured from the said timber, said lumber having been manufactured under the direction and control of the said defendant, and that said defendant knows the uses to which the said lumber was put. [4]

That this plaintiff is unable to give more particularly the description of the said timber so removed from its lands, of the said lumber manufactured from the said timber, but that the estimate and statement of the quantity thereof contained in this complaint is correct and the value thereof is correctly stated.

## X.

That the trespasses and wrongful acts of the defendant hereinbefore stated to have been committed by him were continuing in their nature and constituted and were in pursuance of a plan on the part of the said defendant and the said corporations to cut and appropriate and manufacture into lumber the whole of the timber cut from plaintiff's lands and manufactured by said defendant as hereinbefore alleged.

That said trespasses and wrongful acts of the said defendant, as committed by said defendant, extended through a series of years, and that the plaintiff is unable to state what cutting and what manufacturing of lumber from the timber cut occurred in particular months or in particular years, or what appropriations of its timber or its lumber occurred in particular months or in particular years. That said cutting and manufacturing were extensive and were in the exclusive charge of the said defendant and that the said defendant has knowledge of all the details and facts in regard thereto.

That the corporations hereinbefore referred to ceased to exist since the commission of said acts herein complained of and charged to have been committed by said defendant.

WHEREFORE, plaintiff prays judgment against said defendant A. B. Hammond for the sum of Two Hundred and Eleven Thousand Eight Hundred and Fifty-four and 10/100 (211,854.10) Dollars.

ROBT. T. DEVLIN,  
United States Attorney.

[Endorsed]: Filed June 24th, 1910. Southard Hoffman, Clerk. By J. A. Schaertzer, Deputy Clerk. [5]

---

**Summons.**

UNITED STATES OF AMERICA.

*Circuit Court of the United States, Ninth Judicial  
Circuit, Northern District of California.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

A. B. HAMMOND,

Defendant.

Action brought in the said Circuit Court and the complaint filed in the office of the Clerk of the said Circuit Court, in the City and County of San Francisco.

ROBT. T. DEVLIN,  
Attorney for Plaintiff.

The President of the United States of America,  
Greeting: To A. B. Hammond, Defendant.

YOU ARE HEREBY DIRECTED TO APPEAR and answer the Complaint in an action entitled as above, brought against you in the Circuit Court of the United States, Ninth Judicial Circuit, in and for the Northern District of California, within ten days after the service on you of this Summons—if served within this County; or within thirty days if served elsewhere.

And you are hereby notified that unless you appear and answer as above required, the said plaintiff will take judgment for any money or damages

demanded in the complaint, as arising upon contract, or it will apply to the Court for any other relief demanded in the complaint.

WITNESS the Honorable MELVILLE W. FULLER, Chief Justice of the United States, this 24th day of June, in the year of our Lord one thousand nine hundred and ten and of our independence the 134th.

[Seal]

SOUTHARD HOFFMAN,

Clerk.

By J. A. Schaertzer,

Deputy Clerk. [6]

United States Marshal's Office,  
Northern District of California.

I HEREBY CERTIFY that I received the within Summons on the 25th day of June, 1910, and personally served the same on the 28th day of June, 1910, upon A. B. Hammond the defendant therein named, by delivering to and leaving with said A. B. Hammond, said defendant named therein, personally, at the City and County of San Francisco, in said District, a copy thereof, together with a copy of the Complaint, attached thereto.

C. T. ELLIOTT,

U. S. Marshal.

By B. F. Towle,

Office Deputy.

Dated at San Francisco this 28th day of June, 1910.

[Endorsed]: Filed Jun. 28, 1910. Southard Hoffman, Clerk. By W. B. Maling, Deputy Clerk. [7]

*In the Circuit Court of the United States, Ninth Circuit,  
Northern District of California.*

No. 15,130.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

A. B. HAMMOND,

Defendant.

**Demurrer.**

Now comes defendant above named and demurs to the complaint herein upon the following grounds:

1.

That said complaint does not state facts sufficient to constitute a cause of action.

2.

That this Court is without jurisdiction of the subject matter of this action inasmuch as said action is one to recover damages for trespass upon, or in the nature of trespass to, real property wholly situated within the State of Montana.

3.

That this Court is without jurisdiction of the subject matter of this action inasmuch as said action while commenced as one at law is, in reality, a suit in equity for an accounting and discovery.

4.

That this Court is without jurisdiction of the subject matter of this action inasmuch as said complaint is in effect a bill in equity for a discovery and accounting and the plaintiff has a plain, speedy and adequate remedy at law.



## 5.

That said complaint is uncertain in this, that it cannot be ascertained therefrom what was the quantity of timber which it is [8] alleged in said complaint was cut down, felled and removed.

## 6.

That said complaint is uncertain in this, that it cannot be ascertained therefrom at what time or times between and from the years 1885 to and including the year 1894 the timber, or any thereof, alleged in said complaint to have been cut down, felled and removed was in fact cut down, felled and removed, or cut down, felled or removed.

## 7.

That said complaint is uncertain in this, that it cannot be ascertained therefrom at what time or times between and from the years 1885 to and including the year 1894 the lumber or any thereof, alleged in said complaint to have been manufactured and sold from the lumber alleged to have been cut down, felled and removed, was in fact so manufactured and sold.

## 8.

That said complaint is uncertain in this, that it cannot be ascertained therefrom at what time or times between January 1st, 1885, and January 1st, 1895, defendant appropriated, used or sold or caused to be appropriated, used or sold or converted the lumber described in said complaint.

## 9.

Said complaint is uncertain in this, that it cannot be ascertained therefrom what part of the timber

and lumber alleged in said complaint to have been converted was converted by "The Montana Improvement Company, Limited," and defendant, on the one hand and by "The Black Foot Milling and Manufacturing Company" and defendant on the other hand.

10.

That said complaint is ambiguous in the respect and for the reason in which it is last herein stated to be uncertain. [9]

11.

That said complaint is unintelligible in the respect and for the reason in which it is last herein stated to be uncertain.

12.

That said complaint is uncertain in this, that it cannot be ascertained therefrom whether defendant and "The Montana Improvement Company, Limited," converted timber and lumber from all of the lands in said complaint described, or only from certain of said lands.

13.

That said complaint is ambiguous in the respect and for the reason in which it is last herein stated to be uncertain.

14.

That said complaint is unintelligible in the respect and for the reason in which it is last herein stated to be uncertain.

15.

That said complaint is uncertain in this, that it cannot be ascertained therefrom from which of the

lands particularly described in said complaint defendant and "The Montana Improvement Company, Limited," converted timber and lumber as alleged in said complaint.

16.

That said complaint is ambiguous in the respect and for the reason in which it is last herein stated to be uncertain.

17.

That said complaint is unintelligible in the respect and for the reason in which it is last herein stated to be uncertain.

18.

That said complaint is uncertain in this, that it cannot be ascertained therefrom whether defendant and "The Black Foot Milling and Manufacturing Company" converted timber and lumber [10] from all of the lands in said complaint described or only from certain of said lands.

19.

That said complaint is ambiguous in the respect and for the reason in which it is last herein stated to be uncertain.

20.

That said complaint is unintelligible in the respect and for the reason in which it is last herein stated to be uncertain.

21.

That said complaint is uncertain in this, that it cannot be ascertained therefrom from which of the lands particularly described in said complaint defendant and "The Black Foot Milling and Manu-



facturing Company," converted timber and lumber as alleged in said complaint.

22.

That said complaint is ambiguous in the respect and for the reason in which it is last herein stated to be uncertain.

23.

That said complaint is unintelligible in the respect and for the reason in which it is last herein stated to be uncertain.

24.

That said complaint is uncertain in this, that it cannot be ascertained therefrom how much of the said lumber and timber alleged to have been converted was taken from the water-shed of the Big Black Foot River and how much thereof from the water-shed of the Hell Gate River.

25.

That said complaint is ambiguous in the respect and for the reason in which it is last herein stated to be uncertain.

26.

That said complaint is unintelligible in the respect and for the reason in which it is last herein stated to be uncertain. [11]

27.

That said complaint is uncertain in this, that it cannot be ascertained therefrom how much of the timber and lumber alleged in said complaint to have been converted was taken from T. 14 N., R. 16 W.; T. 14 N., R. 15 W.; T. 14 N., R. 14 W., and T. 13 N., R. 14 W., as described in said complaint, and how

much was taken from T. 11 N., R. 16 W. and T. 11 N., R. 15 W. as described in said complaint.

28.

That said complaint is ambiguous in the respect and for the reason in which it is last herein stated to be uncertain.

29.

That said complaint is unintelligible in the respect and for the reason in which it is last herein stated to be uncertain.

30.

That said complaint is uncertain in this, that it cannot be ascertained therefrom at what place or places the act of conversion of the timber and lumber alleged in said complaint to have been converted in fact took place.

31.

That said complaint is ambiguous in the respect and for the reason in which it is last herein stated to be uncertain.

32.

That said complaint is unintelligible in the respect and for the reason in which it is last herein stated to be uncertain.

33.

That said complaint is uncertain in this, that it cannot be ascertained therefrom where the mills at which it is alleged in said complaint that the said lumber was manufactured, were or where any of said mills was situated.

34.

That said complaint is ambiguous in the respect

and for the [12] reason in which it is last herein stated to be uncertain.

35.

That said complaint is unintelligible in the respect and for the reason in which it is last herein stated to be uncertain.

36.

Said complaint is uncertain in this, that *that* while the value of the timber and lumber alleged to have been cut and converted is in its several stages from timber to manufactured lumber set forth in said complaint, particularly in paragraph 6 thereof, nevertheless, it cannot be ascertained from said complaint as of what place or places said valuations or any of them are computed.

37.

That said complaint is unintelligible in the respect and for the reason in which it is last herein stated to be uncertain.

38.

That several causes of action are set forth in said complaint, but are not separately stated, in this, that a cause of action against the defendant arising against defendant by reason of his relation to "The Montana Improvement Company, Limited," is joined with a cause of action arising against defendant by reason of his relation to "The Black Foot Milling and Manufacturing Company," and that said causes of action are not separately stated in said complaint.

39.

That several causes of action have been improp-

erly united in said complaint in this, that a cause of action arising against defendant by reason of his relation to "The Montana Improvement Company, Limited," is improperly united with a cause of action arising against defendant by reason of his relation to "The Black Foot Milling and Manufacturing Company."

WHEREFORE, defendant prays that this his demurrer be [13] sustained and that he have and recover his costs herein incurred.

W. S. BURNETT,

Attorney for Defendant.

The service upon defendant above named of all documents and papers other than writs and processes may be made upon defendant's attorney, W. S. Burnett, Care of Hammond Lumber Company, 9th Floor Merchants' Exchange Building, San Francisco, Cal. (After July 30th, 1910, the address will be 9th Floor, Newhall Building, San Francisco, Cal.)

Received a copy of the within demurrer this 8th day of July, 1910.

ROBT. T. DEVLIN,

Attorney for Deft.

[Endorsed]: Filed Jul. 8, 1910. Southard Hoffman, Clerk. By J. A. Schaertzer, Deputy Clerk.  
[14]

*In the Circuit Court of the United States, Ninth Circuit,  
Northern District of California.*

No. 15,130.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

A. B. HAMMOND,

Defendant.

**Amended Demurrer.**

Now comes the defendant above named and as of course, after the filing of his demurrer herein, but before the trial of the issue of law thereon, files his amended demurrer herein, and demurs to the complaint herein upon the following grounds:

1.

That said complaint does not state facts sufficient to constitute a cause of action.

2.

That this Court is without jurisdiction of the subject matter of this action inasmuch as said action is one to recover damages for trespass upon, or in the nature of trespass to, real property wholly situated within the State of Montana.

3.

That this Court is without jurisdiction of the subject matter of this action inasmuch as said action while commenced as one at law is, in reality, a suit in equity for an accounting and discovery.

4.

That this Court is without jurisdiction of the sub-



ject matter of this action inasmuch as said complaint is in effect a bill in equity for a discovery and accounting and the plaintiff has a plain, speedy and adequate remedy at law. [15]

5.

That said complaint is uncertain in this, that it cannot be ascertained therefrom at what time or times between and from the years 1885 to and including the year 1894 the timber, or any thereof, alleged in said complaint to have been cut down, felled and removed was in fact cut down, felled and removed, or cut down, felled or removed.

6.

That said complaint is ambiguous in the respect and for the reason in which it is last herein stated to be uncertain.

7.

That said complaint is unintelligible in the respect and for the reason in which it is last herein stated to be uncertain.

8.

That said complaint is uncertain in this, that it cannot be ascertained therefrom at what time or times between and from the years 1885 to and including the year 1894 the lumber, or any thereof, alleged in said complaint to have been manufactured and sold from the lumber alleged to have been cut down, felled and removed, was in fact so manufactured and sold.

9.

That said complaint is uncertain in this, that it cannot be ascertained therefrom at what time or

times between January 1st, 1885, and January 1st, 1895, defendant, appropriated, used or sold or caused to be appropriated, used or sold or converted the lumber described in said complaint.

10.

That said complaint is ambiguous in the respect and for the reason in which it is last herein stated to be uncertain.

11.

That said complaint is unintelligible in the respect and for the reason in which it is last herein stated to be uncertain. [16]

12.

Said complaint is uncertain in this, that it cannot be ascertained therefrom what part of the timber and lumber alleged in said complaint to have been converted was converted by "The Montana Improvement Company, Limited," and defendant, on the one hand and by "The Black Foot Milling and Manufacturing Company" and defendant on the other.

13.

That said complaint is ambiguous in the respect and for the reason in which it is last herein stated to be uncertain.

14.

That said complaint is unintelligible in the respect and for the reason in which it is last herein stated to be uncertain.

15.

That said complaint is uncertain in this, that it cannot be ascertained therefrom whether defendant

and "The Montana Improvement Company, Limited," converted timber and lumber from all of the lands in said complaint described, or only from certain of said lands.

16.

That said complaint is ambiguous in the respect and for the reason in which it is last herein stated to be uncertain.

17.

That said complaint is unintelligible in the respect and for the reason in which it is last herein stated to be uncertain.

18.

That said complaint is uncertain in this, that it cannot be ascertained therefrom from which of the lands particularly described in said complaint defendant and "The Montana Improvement Company, Limited," converted timber and lumber as alleged [17] in said complaint.

19.

That said complaint is ambiguous in the respect and for the reason in which it is last herein stated to be uncertain.

20.

That said complaint is unintelligible in the respect and for the reason in which it is last herein stated to be uncertain.

21.

That said complaint is uncertain in this that it cannot be ascertained therefrom whether defendant and "The Black Foot Milling and Manufacturing Company" converted timber and lumber from all of



the lands in said complaint described or only from certain of said lands.

22.

That said complaint is ambiguous in the respect and for the reason in which it is last herein stated to be uncertain.

23.

That said complaint is unintelligible in the respect and for the reason in which it is last herein stated to be uncertain.

24.

That said complaint is uncertain in this, that it cannot be ascertained therefrom from which of the lands particularly described in said complaint defendant and "The Black Foot Milling and Manufacturing Company" converted timber and lumber as alleged in said complaint.

25.

That said complaint is ambiguous in the respect and for the reason in which it is last herein stated to be uncertain.

26.

That said complaint is unintelligible in the respect and [18] for the reason in which it is last herein stated to be uncertain.

27.

That said complaint is uncertain in this, that it cannot be ascertained therefrom how much of the said lumber and timber alleged to have been converted was taken from the water-shed of the Big Black Foot River and how much thereof from the water-shed of the Hell Gate River.

28.

That said complaint is ambiguous in the respect and for the reason in which it is last herein stated to be uncertain.

29.

That said complaint is unintelligible in the respect and for the reason in which it is last herein stated to be uncertain.

30.

That said complaint is uncertain in this, that it cannot be ascertained therefrom how much of the timber and lumber alleged in said complaint to have been converted was taken from T. 14 N., R. 16 W.; T. 14 N., R. 15 W.; T. 14 N., R. 14 W.; and T. 13 N., R. 14 W., as described in said complaint, and how much was taken from T. 11 N., R. 16 W. and T. 11 N., R. 15 W. as described in said complaint.

31.

That said complaint is ambiguous in the respect and for the reason in which it is last herein stated to be uncertain.

32.

That said complaint is unintelligible in the respect and for the reason in which it is last herein stated to be uncertain.

33.

That said complaint is uncertain in this, that it cannot be ascertained therefrom how much timber it is claimed by plaintiff was cut off each quarter section of land in said complaint described. [19]

34.

That said complaint is ambiguous in the respect

and for the reason in which it is last herein stated to be uncertain.

35.

That said complaint is unintelligible in the respect and for the reason in which it is last herein stated to be uncertain.

36.

That said complaint is uncertain in this, that it cannot be ascertained therefrom how much timber it is claimed by plaintiff was cut off each forty acre subdivision or in other words, each quarter of each quarter section embraced in the land described in said complaint.

37.

That said complaint is ambiguous in the respect and for the reason in which it is last herein stated to be uncertain.

38.

That said complaint is unintelligible in the respect and for the reason in which it is last herein stated to be uncertain.

39.

That said complaint is uncertain in this, that it cannot be ascertained therefrom whether or not it is one or several acts of conversion that is complained of therein.

40.

That said complaint is ambiguous in the respect and for the reason in which it is last herein stated to be uncertain.

41.

That said complaint is unintelligible in the respect

and for the reason in which it is last herein stated to be uncertain.

42.

That said complaint is uncertain in this, that it cannot be ascertained therefrom at what place or places the act of conversion or conversions of the timber and lumber alleged in said complaint [20] to have been converted in fact took place.

43.

That said complaint is ambiguous in the respect and for the reason in which it is last herein stated to be uncertain.

44.

That said complaint is unintelligible in the respect and for the reason in which it is last herein stated to be uncertain.

45.

That said complaint is uncertain in this, that it cannot be ascertained therefrom where the mills at which it is alleged in said complaint that the said lumber was manufactured were or where any of said mills was situated.

46.

That said complaint is ambiguous in the respect and for the reason in which it is last herein stated to be uncertain.

47.

That said complaint is unintelligible in the respect and for the reason in which it is last herein stated to be uncertain.

48.

Said complaint is uncertain in this, that while the

value of the timber and lumber alleged to have been cut and converted is in its several stages from timber to manufactured lumber set forth in said complaint, particularly in paragraph 6 thereof, nevertheless, it cannot be ascertained from said complaint as of what place or places said valuations or any of them are computed.

## 49.

That said complaint is unintelligible in the respect and for the reason in which it is last herein stated to be uncertain.

## 50.

That several causes of action are set forth in said complaint, but are not separately stated, in this, that a cause of [21] action against the defendant arising against defendant by reason of his relation to "The Montana Improvement Company, Limited," is joined with a cause of action arising against defendant by reason of his relation to "The Black Foot Milling and Manufacturing Company," and that said causes of action are not separately stated in said complaint.

## 51.

That several causes of action have been improperly united in said complaint in this, that a cause of action arising against defendant by reason of his relation to "The Montana Improvement Company, Limited," is improperly united with a cause of action arising against defendant by reason of his relation to "The Black Foot Milling and Manufacturing Company."



52.

That said complaint is uncertain in this, that it cannot be ascertained therefrom in what way defendant was connected, if at all, with the commission of the conversion or conversions set forth in said complaint.

53.

That said complaint is ambiguous in the respect and for the reason in which it is last herein stated to be uncertain.

54.

That said complaint is unintelligible in the respect and for the reason in which it is last herein stated to be uncertain.

55.

That said complaint is uncertain in this, that it cannot be ascertained therefrom in what way, whether by personal participation or otherwise, the defendant acting as General Manager in charge of and directing all the business of the corporations mentioned in said complaint cut down, felled and removed, or cut down, felled or removed the timber referred to in said complaint. [22]

56.

That said complaint is ambiguous in the respect and for the reason in which it is last herein stated to be uncertain.

57.

That said complaint is unintelligible in the respect and for the reason in which it is last herein stated to be uncertain.

58.

That said complaint is uncertain in this, that it cannot be ascertained therefrom in what way the cutting of the timber alleged in said complaint occurred under the immediate direction and control of defendant.

59.

That said complaint is ambiguous in the respect and for the reason in which it is last herein stated to be uncertain.

60.

That said complaint is unintelligible in the respect and for the reason in which it is last herein stated to be uncertain.

WHEREFORE, defendant prays that this his amended demurrer be sustained and that he have and recover his costs herein incurred.

W. S. BURNETT,  
Attorney for Defendant.

The service upon defendant above named of all documents and papers other than writs and processes may be made upon defendant's attorney, W. S. Burnett, 260 California Street, San Francisco, Cal.

Received copy of the within demurrer this 22d day of December, 1910.

ROBT. T. DEVLIN,  
Atty. for Plaintiff.

[Endorsed]: Filed Dec. 22, 1910. Southard Hoffman, Clerk. By W. B. Maling, Deputy Clerk.  
[23]

At a stated term, to wit, the March term, A. D. 1911, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, held at the Courtroom in the City and County of San Francisco, on Saturday, the 13th day of May, in the year of our Lord one thousand nine hundred and eleven. Present: The Honorable WILLIAM C. VAN FLEET, District Judge.

No. 15,130.

THE UNITED STATES OF AMERICA

vs.

A. B. HAMMOND.

**Order Overruling Demurrer.**

Defendant's demurrer to the complaint herein heretofore heard and submitted being now fully considered, it was ordered that said demurrer be and the same is hereby overruled, with leave to the defendant to answer within thirty days. [24]

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*In the Circuit Court of the United States, Ninth Circuit, Northern District of California.*

No. 15,130.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

A. B. HAMMOND,

Defendant.

**Answer.**

Now comes defendant above named, and for answer to the complaint filed herein denies generally and specifically each and every allegation therein contained and the whole and every part thereof.

1.

And for a further and separate defense and answer to so much of said complaint as charges that timber standing and growing upon the lands described in said complaint as being within Township 11 North, Range 15 West and Township 11 North, Range 16 West of the "Montana Meridian" was cut down, felled and removed, or cut down, felled or removed, and manufactured into lumber, or manufactured into lumber, and appropriated, used, sold and converted, or appropriated, used sold or converted by defendant or the corporations, or either of them named in said complaint, or by any joint tort-feasor of defendant, or by anyone for whose acts defendant is responsible, this defendant avers that said lands last mentioned were and each of said subdivisions thereof was at the time of such cutting down, felling and removing or cutting down, or felling, or removing, mineral lands and not subject to entry under the then existing laws of the United States, except for mineral entry, and that such timber cut therefrom was felled and removed therefrom under and in pursuance of the provisions of [25] the Act of June 3, 1878, Chapter 150, by *bona fide* residents of the State of Montana, not railroad corporations, for and was exclusively used in building, agri-

cultural, mining and other domestic purposes within the State of Montana in compliance with the rules and regulations prescribed from time to time by the Secretary of the Interior in pursuance of the provisions of the said statute last mentioned. That defendant does not know, cannot ascertain and is therefore unable to state the amount of such timber cut down, felled and removed or cut down, felled, or removed from said lands or any part thereof.

## 2.

And for a further and separate defense and answer to so much of said complaint as charges that timber standing and growing upon the lands described in said complaint as being within Township 11 North, Range 15 West and Township 11 North, Range 16 West of the "Montana Meridian" was cut down, felled and removed, or cut down, felled or removed, and manufactured into lumber, or manufactured into lumber, and appropriated, used, sold and converted or appropriated, used, sold or converted, by defendant, or the corporations, or either of them named in said complaint, or by any joint tort-feasor of defendant, or by anyone for whose acts defendant is responsible, this defendant avers that said lands last mentioned were and each of said subdivisions thereof was at the time of such cutting down, felling and removing or cutting down, or felling, or removing, mineral lands and not subject to entry under the then existing laws of the United States, except for mineral entry, as the said terms "mineral lands and not subject to entry under existing laws of the United States except for mineral entry" were then under-



stood and construed by the Secretary of the Interior, and the federal courts and that such timber cut therefrom was felled and removed therefrom under and in pursuance [26] of the provisions of the Act of June 3, 1878, Chapter 150, as said provisions were then understood and construed by the Department of the Interior and the federal courts, by *bona fide* residents of the State of Montana, not railroad corporations, for and was exclusively used in building, agricultural, mining and other domestic purposes within the State of Montana, and not transported therefrom, in compliance with the rules and regulations prescribed from time to time by the Secretary of the Interior in pursuance of the provisions of the said statute last mentioned, and this defendant further pleads the provisions of Section 8 of the Act of March 3, 1891, Chapter 561, 26 Statutes at Large, page 1099, as amended by the Act of March 3, 1891, Chapter 559, 26 Statutes at Large, page 1093, as a defense to the alleged cutting down, felling and removing or cutting down, felling or removing of such timber and to the manufacturing thereof into lumber and to the appropriation, use, sale and conversion or appropriation, use, sale, or conversion thereof. That defendant does not know, cannot ascertain and is therefore unable to state the amount of such timber cut down, felled and removed, or cut down, felled or removed from said lands, or any part thereof.

3.

And for a further and separate defense and answer to so much of said complaint as charges that timber standing and growing upon the lands de-

scribed in said complaint upon the South half of Section 18, Township 14 North, Range 15 West of the "Montana Meridian" was cut down, felled and removed, or cut down, felled or removed, and manufactured into lumber, or manufactured into lumber, and appropriated, used, sold and converted, or appropriated, used, sold or converted by defendant, or the corporations, or either of them named in said complaint, or by any joint tort-feasor [27] of defendant or by anyone for whose acts defendant is responsible this defendant avers that said Section 18 is and was an irregular section comprised of lots, namely, three tiers of lots running from west to east and four tiers of lots running from north to south; that the South half of said section was and is composed of lots Nos. 7, 8 and 9, reading from east to west, said lots containing respectively 38.12 acres, 38.12 acres and 45.32 acres and constituting the North half of said South half of said section and lots No. 10, 11 and 12, reading from west to east, each containing respectively 45.43 acres, 38.12 acres and 38.12 acres and constituting the South half of the South half of said section.

That defendant is informed and believes, and upon such information and belief alleges, that a corporation then and still organized, existing and doing business under the laws of the State of Montana, to wit, Big Blackfoot Milling Company, in the months of November and December, 1892, logged said lots Nos. 7, 8, 11, and 12 under and by virtue of mesne conveyances from one William Tuchenhausen, to whom patent for said lots last mentioned was duly and regu-

larly issued by plaintiff on the 16th day of November, 1891. That defendant was not at said time an officer of the said corporation other than a director thereof and did not personally participate in or direct or control its operations in general or in reference to the logging of said lots last mentioned and defendant has not been an officer of said corporation of any kind or in any wise connected therewith, or a stockholder thereof, since the year 1898. That on the 16th day of January, 1892, Hon. John M. Noble, Secretary of the Department of the Interior, in conformity with the provisions of an Act of Congress approved March 3, 1891, entitled "An Act to amend Section 8 of an Act approved March 3, 1891, entitled 'An Act to Repeal Timber Culture [28] Laws and for other purposes,' " and rules and regulations promulgated by the Secretary of the Interior for the execution of said Act, issued a permit unto the said Big Blackfoot Milling Company to cut timber on certain public lands in the State of Montana, which among other lands therein described, and covered thereby, embraced "the North half of the Southwest Quarter of Section 18" in said township and range last mentioned and which provided that said permit should expire on the 31st day of January, 1893. That said permit was based upon the application theretofore made by said company and theretofore filed in the office of the Commissioner of the General Land Office, in pursuance of the rules of the Secretary of the Interior theretofore promulgated in relation thereto, and that said application sought the privilege of cutting and removing timber from cer-

tain lands therein described including the whole of said Section 18 except the Southeast Quarter thereof. That said company had at said time the right or had arranged for the right to the timber on said Southeast Quarter of said section, by reason of its acquisition of said lots 7, 8, 11 and 12 as hereinbefore in this paragraph set forth. Defendant avers upon information and belief that said corporation cut and removed during the life of said permit certain timber from said lot 10 in said section, while laboring under the mistaken belief that said permit authorized the cutting and removal of timber standing on the North half *and the* Southwest Quarter of said section, as applied for by it, whereas in fact said permit only authorized such cutting and removal from the North half *of the* Southwest Quarter of said section. That defendant did not know at any time that any timber was being cut or removed from said section, nor at any time directed, controlled or sanctioned the cutting and removing or cutting or removing thereof or the manufacture of the same into lumber, or the appropriation, use and conversion or the appropriation, use or conversion thereof by [29] said corporation, but by reason of the foregoing defendant avers that said corporation, or anyone charged with the responsibility for its acts, or participating therein, should not be required to respond in damages for such timber cut and removed from said lot 10 to a greater extent than the value of said timber as it stood in the tree on the ground, to wit, its stumpage value, and defendant avers that its stumpage value did not exceed the sum of fifty cents



per thousand feet. Defendant has no information and cannot ascertain the amount of timber so cut and removed or cut or removed from said lot 10.

## 4.

And for a further and separate defense and answer to so much of said complaint as charges that timber standing and growing upon the lands described in said complaint upon the Southeast Quarter of Section 28, Township 14 North of Range 14 West of the "Montana Meridian" was cut down, felled, and removed, or cut down, felled or removed, and manufactured into lumber, or manufactured into lumber, and appropriated, used, sold and converted, or appropriated, used, sold or converted by defendant, or the corporations, or either of them named in said complaint, or by any joint tort-feasor of defendant or by anyone for whose acts defendant is responsible, this defendant avers that on the twenty-third day of November, 1885, one, Henry F. Edgar filed his pre-emption declaratory statement in the United States Land Office at Helena, Montana, under and in pursuance of the provisions of Sections 2257 to 2274, each inclusive, of the Revised Statutes of the United States, alleging settlement on the said Southeast Quarter of said Section 28 on the 26th day of October, 1885, and defendant avers the fact to be that on the said 26th day of October, 1885, the said Henry F. Edgar settled in good faith upon said lands, which then and there were vacant, unoccupied and surveyed lands of the United States and subject to entry under said [30] sections of the Revised Statutes as a pre-emption claim; that said Edgar was at said time



the head of a family and a citizen of the United States; that said Edgar and his family, consisting of his wife and her son, settled as aforesaid on said land, and at once commenced the clearing thereof for cultivation and the cultivation and improvement of the same, with the end in view and for the purpose of making a home and farm for himself and his said family; that the said Edgar was qualified in all respects to so settle upon and enter upon such land and filed the oath required by said Section 2262 of the Revised Statutes and otherwise complied with the provisions of said sections of the Revised Statutes. That in pursuance of such settlement, intention and purpose, and not otherwise, the said Edgar in the fall of 1885 erected a substantial log dwelling-house about thirty-five feet by twenty feet and divided the same by partitions into suitable rooms for living purposes and finished it so as to make it a comfortable residence for himself and family at all seasons of the year. That in addition thereto he built on said land another log-house of like dimensions for the purpose of using the same as a lodging or "bunk" house, and built suitable and appropriate out-houses such as stables, chicken-houses, etc., and that during the winter of 1885 and spring of 1886 he fenced about two acres of said land and cleared off the same, putting it in cultivation and growing beans, peas, cabbages, potatoes and other like vegetables. That all the buildings and improvements constructed as aforesaid were made from timber cut upon said land and that in the clearing of said land for cultivation, and not otherwise, it became necessary for him to cut

from said land about four hundred thousand feet of timber standing thereon; that the cutting of said timber was absolutely necessary in order that the land might be cleared and subjected to agricultural purposes and made fit and comfortable for a home for himself and family. That [31] after said timber was cut, instead of burning it he sold it to one, W. H. Hammond, who was at the time operating a sawmill manufacturing lumber near the mouth of the Big Blackfoot River at a place since and now called Bonner.

That thereafter and within twelve months after his said settlement upon said land the said Edgar made his application at the United States Land Office at Helena, Montana, to make final proof and entry of said land and thereafter, after due posting and publishing as required by the provisions of said sections of the Revised Statutes and in pursuance of the Act of March 3, 1879, and the rules and regulations of the Secretary of the Interior in such cases provided he made final proof as to his said claim and paid the purchase price therefor, to wit, the sum of Four Hundred Dollars to the Register and Receiver at the said Land Office at Montana.

That thereafter and on or about the fourth day of September, 1886, the said entry was held for cancellation upon report of Special Agent M. J. Haley, then in the field in the Blackfoot Valley, and the said Edgar applied for a hearing, which was postponed at the request of the said land office authorities from time to time, so much so that the said Edgar was unable, by reason of such postponements, to have

said charges heard and disposed of, and finally in necessity and in disgust abandoned the said claim and the said claim was thereafter finally cancelled on or about the twelfth day of November, 1890, and the said Four Hundred Dollars purchase price was returned to him the said Edgar. That the said Edgar was a poor man depending upon his labor for the subsistence of himself and family and could not by reason of the uncertainty as to the disposition of his said claim expend further labor and money in the development thereof and therefore and for no other reason abandoned same. That the said land was and is [32] first-class agricultural land and the said Edgar at all times desired and intended in good faith to make of it a home and farm for himself and family.

Defendant avers that the said timber cut, removed and sold from said Southeast Quarter of said section was so cut, removed and sold in good faith by the said Edgar and purchased in like good faith by the said W. H. Hammond, and that said timber was worth not to exceed the sum of one dollar per thousand feet.

And in this behalf defendant further alleges that the act of plaintiff in returning to the said Edgar the said purchase price of Four Hundred Dollars was in itself an adjudication by said Department of the Interior under the provisions of Section 2262 of the Revised Statutes that he, the said Edgar, had been guilty of no wrongdoing or fraud and had been in fact entitled to settle upon said land and had settled upon said land as a pre-emption claim in good

faith in accordance with the provisions of said sections of the Revised Statutes, and this defendant pleads the said return of such purchase price as an adjudication upholding the good faith of the said Edgar which cannot now be attacked.

And further in this behalf defendant avers that charges were preferred against him and against the said W. H. Hammond both civil and criminal by the Department of the Interior and the Department of Justice in the fall of 1886 and again in the fall of 1889, arising out of the matters in this paragraph hereinbefore set forth, but that after a full investigation said charges were withdrawn and dismissed on or about the sixth day of April, 1892, and defendant relies upon said withdrawal and dismissal as a *re-traxit* and abandonment of said charges by plaintiff and pleads the same in bar.

And further in this behalf defendant avers that the said W. H. Hammond was not in any sense his agent or associate in purchasing said timber from the said Edgar nor was defendant in privity therewith, or participating in, directing or controlling the cutting [33] and removing, or cutting or removing of said timber or the manufacturing thereof into lumber.

WHEREFORE, defendants prays that plaintiff take nothing by its complaint herein, but that defendant have judgment for his costs herein expended.

W. S. BURNETT,  
Attorney for Defendant.



Received copy of within answer this 13th day of July, 1911.

ROBT. T. DEVLIN,  
Attorney for Plaintiff.

[Endorsed] : Filed July 14, 1911. Southard Hoffman, Clerk. [34]

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*In the District Court of the United States, Ninth Circuit, in and for the Northern District of California, Second Division.*

No. 15,130.

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

A. B. HAMMOND,  
Defendant.

**Notice of Motion for Leave to File Amended Answer.**

To the Plaintiff Above Named, and to John L. McNab, Esq., Its Attorney:

You and each of you will please take notice that on Monday, the 30th day of December, 1912, at the hour of 10 o'clock A. M., or as soon thereafter as counsel may be heard, defendant above named will move the above-entitled court at the courtroom thereof, in the United States Court House and Post Office Building, at Seventh and Mission Streets, San Francisco, California, for an order granting unto the defendant leave to file an amended answer herein, which said amended answer is hereto attached and made a part hereof and marked Exhibit "A."



Said motion will be made upon the ground that at the time of the preparation and filing of the original answer herein, defendant was not, and could not, by the exercise of reasonable diligence, be in possession of the facts in the case necessary for a full, true and complete answer to the matter set forth in the complaint, and upon the ground that the filing of said amended answer will be in furtherance of justice.

Said motion will be based on the pleadings and records on file in the above-entitled cause, and upon this notice and the said amended answer, Exhibit "A" hereto, and the affidavit of W. S. Burnett hereto attached, marked Exhibit "B" and made a [35] part hereof.

W. S. BURNETT,  
Attorney for Defendant. [36]

**EXHIBIT "A."**

*In the District Court of the United States, Ninth Circuit, Northern District of California, Second Division.*

No. 15,130.

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

A. B. HAMMOND,  
Defendant.

**Amended Answer.**

Now comes defendant above-named, and by leave of Court first obtained files this, his amended answer, to the complaint herein, and for such answer avers:

That he denies generally and specifically each and every allegation therein contained and the whole and every part thereof.

1.

And for a further and separate defense and answer to so much of said complaint as charges that timber standing and growing upon the lands described in said complaint as being within Township 11 North, Range 15 West, and Township 11 North, Range 16 West, of the "Montana Meridian" was cut down, felled, and removed, or cut down, felled or removed, and manufactured into lumber, or manufactured into lumber, and appropriated, used, sold, and converted, or appropriated, used, sold or converted by defendant, or the corporations, or either of them named in said complaint, or by any joint tortfeasor of defendant, or by anyone for whose acts defendant is responsible, this defendant avers that said lands last mentioned were and each of said subdivisions thereof was at the time of such cutting down, felling and removing or cutting [37] down, or felling, or removing, mineral lands and not subject to entry under the then existing laws of the United States, except for mineral entry, and that such timber cut therefrom was felled and removed therefrom under and in pursuance of the provisions of the Act of June 3, 1878, 20 Stat. at Large, page 88, Chapter 150, by *bona fide* citizens and residents of the State or Territory of Montana, not railroad corporations, for and was exclusively used in building, agricultural, mining, and other domestic purposes within the State of Montana, in compliance with all lawful

rules and regulations prescribed from time to time by the Secretary of the Interior in pursuance of the provisions of the said statute last mentioned. That defendant does not know, cannot ascertain, and is, therefore, unable to state the amount of such timber cut down, felled and removed, or cut down, felled, or removed from said lands or any part thereof.

## 2.

And for a further and separate defense and answer to so much of said complaint as charges that timber standing and growing upon the lands described in said complaint as being within Township 11 North, Range 15 West, and Township 11 North, Range 16 West of the "Montana Meridian" was cut down, felled and removed, or cut down, felled or removed, and manufactured into lumber, or manufactured into lumber, and appropriated, used, sold and converted or appropriated, used, sold or converted, by defendant, or the corporations, or either of them named in said complaint, or by any joint tort-feasor of defendant, or by anyone for whose acts defendant is responsible, this defendant avers that said lands last mentioned were and each of said subdivisions thereof was at the time of such cutting down, felling and removing, or cutting down, or felling, or removing, mineral lands and not subject to entry under the then existing laws of the United States, except for [38] mineral entry, as the said terms "mineral lands and not subject to entry under existing laws of the United States except for mineral entry" were then understood and construed by the Secretary of the Interior, and the federal courts

and that such timber cut therefrom was felled and removed therefrom under and in pursuance of the provisions of the Act of June 3, 1878, 20 Stat. at Large, page 88, Chapter 150, as said provisions were then understood and construed by the Department of the Interior and the federal courts, by *bona fide* citizens and residents of the State or Territory of Montana, not railroad corporations, for and was exclusively used in building, agricultural, mining and other domestic purposes within the State of Montana, and not transported therefrom under rules and regulations prescribed from time to time by the Secretary of the Interior in pursuance of the provisions of the said statute last mentioned, and this defendant further pleads the provisions of Section 8 of the Act of March 3, 1891, Chapter 561, 26 Statutes at Large, page 1099, and the Act of March 3, 1891, Chapter 559, 26 Statutes at Large, page 1093, as a defense to the alleged cutting down, felling and removing or cutting down, felling or removing of such timber, and to the manufacturing thereof into lumber and to the appropriation, use, sale and conversion or appropriation, use, sale, or conversion thereof. That defendant does not know, cannot ascertain, and is therefore unable to state the amount of such timber cut down, felled and removed, or cut down, felled or removed from said lands, or any part thereof.

2½.

And for a further and separate defense and answer to so much of said complaint as charges that timber standing and growing upon the lands described in said complaint as being within Township



11 North, Range 15 West, and Township 11 North, Range 16 [39] West of the "Montana Meridian" was cut down, felled and removed, or cut down, felled or removed, and manufactured into lumber, or manufactured into lumber, and appropriated, used, sold and converted, or appropriated, used, sold or converted by defendant, or the corporations, or either of them named in said complaint, or by any joint tort-feasor of defendant, or by anyone for whose acts defendant is responsible, this defendant avers that as to timber so cut, removed, manufactured and converted, or cut, removed, manufactured or converted, civil charges were preferred against defendant by plaintiff in the month of August, 1886, averring that the timber growing upon the lands in this paragraph of this answer described had been cut, removed, and converted by defendant and one, George W. Fenwick, but that after a full investigation by plaintiff, said charges were withdrawn and dismissed on or about November 19, 1892, and defendant relies upon said withdrawal and dismissal as a *retraxit* and abandonment of said charges by plaintiff, and pleads the same in bar as a defense to the cutting, removal and conversion, or cutting, removal or conversion of any and all timber growing upon the lands in this paragraph of this answer described, and which was cut, removed and converted, or cut, or removed, or converted at any and all times prior to August 30, 1886.

3.

And for a further and separate defense and answer to so much of said complaint as charges that



timber standing and growing upon the lands described in said complaint upon the South half of Section 18, Township 14 North, Range 15 West of the "Montana Meridian" was cut down, felled and removed, or cut down, felled or removed, and manufactured into lumber, or manufactured into lumber, and appropriated, used, sold and [40] converted, or appropriated, used, sold or converted by defendant, or the corporations, or either of them named in said complaint, or by any joint tort-feasor of defendant or by anyone for whose acts defendant is responsible, this defendant avers that said Section 18 is and was an irregular section comprised of lots, namely, three tiers of lots running from west to east and four tiers of lots running from north to south; that the South half of said section was and is composed of lots No. 7, 8 and 9, reading from east to west, said lots containing respectively 38.12 acres, 38.12 acres and 45.32 acres and constituting the North half of said South half of said section and lots No. 10, 11 and 12, reading from west to east, each containing respectively 45.43 acres, 38.12 acres and 38.12 acres and constituting the South half of the South half of said section.

That defendant is informed and believes and upon such information and belief alleges that a corporation then and still organized, existing and doing business under the laws of the State of Montana, to wit, Big Blackfoot Milling Company, in the months of November and December, 1892, logged said lots Nos. 7, 8, 11 and 12 under and by virtue of mesne conveyances from one William Tuchenhausen, to

whom patent for said lots last mentioned was duly and regularly issued by plaintiff on the 16th day of November, 1891. That defendant was not at said time an officer of the said corporation other than a director thereof and did not personally participate in or direct or control its operations in general or in reference to the logging of said lots last mentioned, and defendant has not been an officer of said corporation of any kind or in any wise connected therewith, or a stockholder thereof, since the year 1898. That on the 16th day of January, 1892, Hon. John M. Noble, Secretary of the [41] Department of the Interior in conformity with the provisions of an Act of Congress approved March 3, 1891, entitled "An act to amend Section 8 of an Act approved March 3, 1891, entitled 'An act to Repeal Timber Culture Laws and for other purposes,' " and rules and regulations promulgated by the Secretary of the Interior for the execution of said Act, issued a permit unto the said Big Blackfoot Milling Company to cut timber on certain public lands in the State of Montana, which among other lands therein described, and covered thereby, embraced "the North half of the Southwest Quarter of Section 18" in said township and range last mentioned and which provided that said permit should expire on the 31st day of January, 1893. That said permit was based upon the application theretofore made by said company and theretofore filed in the office of the Commissioner of the General Land Office, in pursuance of the rules of the Secretary of the Interior theretofore promulgated in relation thereto, and that said ap-

plication sought the privilege of cutting and removing timber from certain lands therein described including the whole of said Section 18 except the Southeast Quarter thereof. That said company had at said time the right or had arranged for the right to the timber on said Southeast Quarter of said section, by reason of its acquisition of said lots 7, 8, 11 and 12 as hereinbefore in this paragraph set forth. Defendant avers upon information and belief that said corporation cut and removed during the life of said permit certain timber from said lot 10 in said section, while laboring under the mistaken belief that said permit authorized the cutting and removal of timber standing on the North half *and the* Southwest Quarter of said section, as applied for by it, whereas in fact said permit only authorized such cutting and removal from the North half *of the* Southwest Quarter of said section, that is to say, said lot 9 thereof. And [42] defendant avers that all timber cut from said lot 9 thereof was cut under and in pursuance of and in compliance with the terms of said permit and the said Act of Congress and rules and regulations prescribed by the Secretary of the Interior thereunder. That defendant did not know at any time that any timber was being cut or removed from said section, nor at any time directed, controlled or sanctioned the cutting and removing or cutting or removing thereof or the manufacture of the same into lumber, or the appropriation, use and conversion or the appropriation, use or conversion thereof by said corporation, but by reason of the foregoing defendant avers that

said corporation, or anyone charged with the responsibility for its acts, or participating therein, should not be required to respond in damages for such timber cut and removed from said lot 10 to a greater extent than the value of said timber as it stood in the tree on the ground, to wit, its stumpage value and defendant avers that its stumpage value did not exceed the sum of fifty cents per thousand feet. Defendant has no information and cannot ascertain the amount of timber so cut and removed or cut or removed from said lots 9 or 10 or either of them.

## 4.

And for a further and separate defense and answer to so much of said complaint as charges that timber standing and growing upon the lands described in said complaint upon the Southeast Quarter of Section 28, Township 14 North of Range 14 West of the "Montana Meridian" was cut down, felled, and removed, or cut down felled or removed, and manufactured into lumber, or manufactured into lumber and appropriated, used, sold and converted, or appropriated, used, sold or converted by defendant, or the corporations, or either of them named in said complaint or by any joint tort-feasor of defendant or by anyone for [43] whose acts defendant is responsible this defendant avers that on the twenty-third day of November, 1885, one, Henry F. Edgar filed his pre-emption declaratory statement in the United States Land Office at Helena, Montana, under and in pursuance of the provisions of Sections 2257 to 2274, each inclusive,



of the Revised Statutes of the United States alleging settlement on the said Southeast quarter of said Section 28 on the 26th day of October, 1885, and defendant avers the fact to be that on the said 26th day of October, 1885, the said Henry F. Edgar settled in good faith upon said lands, which then and there were vacant, unoccupied and surveyed lands of the United States and subject to entry under said sections of the Revised Statutes as a pre-emption claim; that said Edgar was at said time the head of a family and a citizen of the United States; that said Edgar and his family, consisting of his wife and her son, settled as aforesaid on said land and at once commenced the clearing thereof for cultivation and the cultivation and improvement of the same with the end in view and for the purpose of making a home and farm for himself and his said family; that the said Edgar was qualified in all respects to so settle upon and enter upon such land and filed the oath required by said Section 2262 of the Revised Statutes and otherwise complied with the provisions of said sections of the Revised Statutes. That in pursuance of such settlement, intention and purpose, and not otherwise, the said Edgar in the fall of 1885 erected a substantial log dwelling-house about thirty-five feet by twenty feet and divided the same by partitions into suitable rooms for living purposes and finished it so as to make it a comfortable residence for himself and family at all seasons of the year. That in addition thereto he built on said land another log house of like dimensions for the purpose of using the same as a lodging or "bunk" house and



built suitable and appropriate outhouses such as stables, [44] chicken-houses, etc., and that during the winter of 1885 and spring of 1886 he fenced about two acres of said land and cleared off the same putting it in cultivation and growing beans, peas, cabbages, potatoes and other like vegetables. That all the buildings and improvements constructed as aforesaid were made from timber cut upon said land and that in the clearing of said land for cultivation, and not otherwise, it became necessary for him to cut from said land about Four Hundred Thousand feet of timber standing thereon; that the cutting of said timber was absolutely necessary in order that the land might be cleared and subjected to agricultural purposes and made fit and comfortable for a home for himself and family. That after said timber was cut, instead of burning it he sold it to one W. H. Hammond, who was at the time operating a sawmill manufacturing lumber near the mouth of the Big Blackfoot River at a place since and now called Bonner.

That thereafter in the month of May, 1886, the said Edgar made his application at the United States Land Office at Helena, Montana, to make final proof and entry of said land, and thereafter, after due posting and publishing as required by the provisions of said sections of the Revised Statutes and in pursuance of the Act of March 3, 1879, and the rules and regulations of the Secretary of the Interior in such cases provided, he made final proof as to his claim and paid the purchase price therefor, to wit, the sum of Four Hundred Dollars to the Register and Re-

ceiver at the said Land Office at Montana. That defendant is informed and believes and upon such information and belief alleges that the said Edgar and the said W. H. Hammond believing, and without having notice or knowledge to the contrary, that said final proof had not been accepted and final certificate and receipt issued to him the said Edgar for his said claim, thereupon, in good faith and for the purpose of enabling the [45] further agricultural development of the said claim, and not otherwise, cut and removed therefrom the merchantable timber remaining upon said claim, to wit, 600,000 feet.

That thereafter and on or about the fourth day of September, 1886, the said entry was held for cancellation upon report of Special Agent M. J. Haley, then in the field in the Blackfoot Valley, and the said Edgar applied for a hearing which was postponed at the request of the same land office authorities from time to time, so much so that the said Edgar was unable by reason of such postponements to have said charges heard and disposed of, and finally in necessity and in disgust abandoned the said claim and the said claim was thereafter finally cancelled on or about the twelfth day of November, 1890. That the said Edgar was a poor man depending upon his labor for the subsistence of himself and family and could not by reason of the uncertainty as to the disposition of his said claim expend further labor and money in the development thereof, and therefore and for no other reason abandoned same. That the said land was and is first-class agricultural land and the said Edgar at all times desired and intended

in good faith to make of it a home and farm for himself and family.

Defendant avers that the said timber cut, removed and sold from said Southeast Quarter of said section was so cut, removed and sold in good faith by the said Edgar and purchased in like good faith by the said W. H. Hammond and that said timber was worth not to exceed the sum of one dollar per thousand feet.

And further in this behalf defendant avers that charges were preferred against him and against the said W. H. Hammond both civil and criminal by the Department of the Interior and the Department of Justice in the fall of 1886 and again in the fall of 1889 arising out of the matters in this paragraph hereinbefore [46] set forth, but that after a full investigation by plaintiff said charges were withdrawn and dismissed on or about the sixth day of April, 1892, and defendant relies upon said withdrawal and dismissal as a *retraxit* and abandonment of said charges by plaintiff and pleads the same in bar.

And further in this behalf defendant avers that the said W. H. Hammond was not in any sense his agent or associate in purchasing said timber from the said Edgar nor was defendant in privity therewith, or participating in, directing or controlling the cutting and removing, or cutting or removing of said timber or the manufacturing thereof into lumber.

5.

And for a further and separate defense and an-

swer to said complaint and the whole thereof, defendant avers that all of the timber which it is therein alleged was cut down, felled and removed, or cut down, felled or removed, and manufactured into lumber or manufactured into lumber, and appropriated, used, sold and converted, or appropriated, used, sold or converted by defendant, or the corporations, or either of them named in said complaint, or by any joint tort-feasor of defendant, or by anyone for whose acts defendant is responsible, was cut and removed from the public timber lands of the United States by persons then citizens and residents of the state or territory of Montana for agricultural, mining, manufacturing or domestic purposes and was actually used for such purposes and not transported out of said State or territory of Montana, and that at the time mentioned in the complaint herein there were no regulations made or prescribed by the Secretary of the Interior respecting said matter. And further in this behalf defendant avers that he was during the period of time intervening between the first day of January, 1885, and the first day of January, 1895, a citizen and resident of the State of Montana. [47]

## 6.

And for a further and separate defense and answer to said complaint the defendant avers that all the timber which it is herein alleged was cut down, felled and removed, or cut down, felled or removed, manufactured into lumber, or manufactured into lumber, and appropriated, used, sold and converted, or appropriated, used, sold and converted, or appro-



priated, used, sold or converted by defendant, or the corporations, or either of them named in said complaint, or by any joint tort-feasor of defendant, or by anyone for whose acts defendant is responsible, was cut, removed, manufactured and sold without oppression, fraud or malice against the plaintiff or anyone else, or other than in the full and firm belief that it was lawful and proper that said timber should be so cut down, removed, manufactured and sold and in this behalf defendant avers that the value of the said timber was not in excess of the sum of twenty-five cents per thousand feet board measure while standing.

WHEREFORE, defendant prays that plaintiff take nothing by its complaint herein but that defendant have judgment for his costs herein expended.

W. S. BURNETT,

Attorney for Defendant. [48]

EXHIBIT "B."

*In the District Court of the United States, Ninth Circuit, in and for the Northern District of California, Second Division.*

No. 15,130.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

A. B. HAMMOND,

Defendant.



**Affidavit of W. S. Burnett in Support of Motion for  
Leave to File Amended Answer.**

State of California,  
City and County of San Francisco,—ss.

W. S. BURNETT, being first duly sworn, deposes and says:

That he is and ever since the appearance of the defendant in the above-entitled action has been, sole attorney of record for the defendant herein; that he prepared the answer on file herein on or about July 14, 1911; that the matters out of which the alleged cause of action arises against defendant, set forth in the complaint herein, all transpired in the State or Territory of Montana, between the years 1885 and 1895, each inclusive, and are mostly concerned with the action of parties other than the defendant personally; that by reason of the ancientness and obscurity resulting therefrom, it was only recently and subsequent to the preparation of said original answer herein that defendant or affiant could, by the exercise of reasonable diligence, learn certain of the facts in the case necessary to a full and true answer herein, and that by reason of such facts discovered since the preparation and filing of the original answer herein, it has become necessary to file said amended answer; that the facts alleged in the amended [49] answer hereto attached, and marked Exhibit "A," are true as affiant verily believes; that the filing of said amended answer will be in furtherance of justice.

And further affiant saith not.

W. S. BURNETT.

Subscribed and sworn to before me, this 24th day of December, 1912.

[Seal]

FRANK L. OWEN,  
Notary Public in and for the City and County of  
San Francisco, State of California.

[Endorsed]: Filed Dec. 24, 1912. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [50]

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At a stated term, to wit, the November term, A. D.  
1912, of the District Court of the United States  
of America, in and for the Northern District of  
California, Second Division, held at the Court-  
room in the City and County of San Francisco,  
on Monday, the 13th day of January, in the year  
of our Lord one thousand nine hundred and thir-  
teen. Present: The Honorable WILLIAM C.  
VAN FLEET, District Judge.

No. 15,130.

UNITED STATES

vs.

A. B. HAMMOND.

**Order Granting Motion to File Amended Answer.**

By consent ordered that defendant's motion for  
leave to file amended answer be granted. [51]

*United States District Court, Northern District of  
California, Second Division.*

No. 15,130.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

A. B. HAMMOND,

Defendant.

**Verdict.**

We, the jury, find in favor of the plaintiff and assess the damages against the defendant in the sum of Fifty-one Thousand and Forty (\$51,040.00) dollars.

GEORGE W. ELIASSEN,

Foreman.

[Endorsed]: Filed Feb'y 8, 1913. W. B. Maling,  
Clerk. [52]

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*In the United States District Court in and for the  
Northern District of California, Second Division*

No. 15,130.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

A. B. HAMMOND,

Defendant.

**Judgment on Verdict.**

This cause having come on regularly for trial upon the 14th day of January, 1913, being a day in the

November, 1912, Term of said Court, before the Court and a jury of twelve men, duly impaneled and sworn to try the issue joined herein, Frank Hall, Special Assistant to the Attorney General and Thomas H. Salvage, Assistant United States District Attorney, appearing as attorneys for the plaintiff and Charles S. Wheeler, and W. S. Burnett, Esqrs., appearing as attorneys for the defendant; and the trial having been proceeded with on the 15th, 16th, 17th, 21st, 22d, 23d, 24th, 28th, 30th and 31st days of January and the 4th, 5th, 6th, 7th and 8th days of February, all in said year and term, and oral and documentary evidence upon behalf of the respective parties having been introduced and closed, and the cause, after arguments of the attorneys and the instructions of the Court, having been submitted to the jury and the jury having subsequently rendered the following verdict, which was ordered recorded, namely: "We, the jury, find in favor of the plaintiff and assess the damages against the defendant in the sum of Fifty-one Thousand and Forty (\$51,040.00) Dollars. George W. Eliassen, Foreman,"—and the Court having ordered that judgment be entered in accordance with said verdict and for costs:

Now, therefore, by virtue of the law and by reason of the [53] premises aforesaid, it is considered by the Court that the United States of America, plaintiff, do have and recover of and from A. B. Hammond, defendant, the sum of Fifty-one Thousand Forty and no/100 (\$51,040.00) Dollars, together with its costs in this behalf expended, taxed at \$1,617.49.

Judgment entered February 8, 1913.

W. B. MALING,  
Clerk.

A true copy. ATTEST:

[Seal]

W. B. MALING,  
Clerk.

[Endorsed]: Filed Feb. 8, 1913. W. B. Maling,  
Clerk. [54]

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*In the District Court of the United States for the  
Northern District of California.*

No. 15,130.

UNITED STATES

vs.

A. B. HAMMOND.

**Clerk's Certificate to Judgment-roll.**

I, W. B. Maling, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing papers hereto annexed constitute the Judgment-roll in the above-entitled action.

ATTEST my hand and the seal of said District Court, this 8th day of February, 1913.

[Seal]

W. B. MALING,  
Clerk.

[Endorsed]: Filed February 8, 1913. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [55]



*In the District Court of the United States, in and for  
the Northern District of California, Division  
No. 2.*

No. 15,130.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

A. B. HAMMOND,

Defendant.

**Bill of Exceptions.**

BE IT REMEMBERED, that on the trial of this cause, in this court, at the November term, 1912, thereof, the Honorable Wm. C. Van Fleet, District Judge, presiding, the plaintiff being represented by Frank Hall, Esq., Special Assistant to the Attorney General, and Thos. H. Selvage, Esq., Assistant United States Attorney, and the defendant by Chas. S. Wheeler, Esq., and W. S. Burnett, Esq., the following proceedings were had:

On Tuesday, January 14, 1913, a jury was impaneled and sworn according to law, and thereupon, upon motion of Mr. Hall, it was ordered that the complaint herein might be amended by adding to the third paragraph thereof the words "Missoula Mercantile Company and Big Blackfoot Milling Company"; and thereupon it was ordered by the court that the amended answer on file stand as an answer to the complaint as so amended and be deemed to deny the matter added to the complaint by said amendment.

Thereupon Mr. Hall made his opening statement

(Testimony of U. S. Swartz.)  
on behalf [56] of the Government.

Thereupon the plaintiff, to sustain the issues upon its part, offered the evidence of the witnesses hereinafter named and the documents hereinafter set forth, as its evidence in chief, in the manner, form and substance following:

**[Testimony of U. S. Swartz, for Plaintiff.]**

U. S. SWARTZ, a witness called on behalf of the plaintiff, after being first duly sworn, testified as follows:

**Direct Examination.**

I am forty-seven years old. I reside at Missoula, Montana, and have resided there for twelve years. By occupation I am timber cruiser and land surveyor. I have been pursuing this occupation in the woods since 1880. In surveying I received my education in the common schools and one short course I took in Eau Claire, Wisconsin, in six months, just to obtain a knowledge of land surveying. I have been following the actual profession of land surveyor for about twenty-four or twenty-five years. As to the extent of my work in land surveying, it has just been in subdividing surveyed sections for the different companies I have worked for and tracking section lines. This work of land surveying I have pursued more or less every year for the companies I have worked for. I attend to the surveying for these companies. I have been engaged in scaling timber [57] about the same length of time. I am now employed by the Forest Service as a timber cruiser. In 1909 I was employed by Mr. Sharp, of the Fourth

(Testimony of U. S. Swartz.)

Field Division of the General Land Office, to cruise timber and survey lands in the Big Blackfoot Valley and in the Hellgate Valley, in Montana. Under that employment I was to run lines and to scale timber. I did not have charge of the party. Mr. Bennett had. The surveying which I did was replacing the old section lines and doing the subdivision where necessary in the sections. As to scaling of timber, I did a portion of the scaling of the stumps on the land that was designated. I used Scribner's decimal "C" rule in scaling the stumps. I prepared a special rule that was used in the scaling of the timber in question in this suit. As to the preparation of this rule, the purpose for which it was prepared and the manner it was afterwards used in scaling the timber, I would state that the rule was prepared for the reason that the trees that remained on the ground in most instances on this land were just stumps. The body of the tree or the part between the stump and the top had gone, and the top was also destroyed, so you could not find it; so to make this rule we went in the neighborhood in the same class of timber, where timber had been cut as near as we could on adjoining land, and measured the stump, the distance from the stump in the ground where the tree had laid, to the top where it had been cut off, and measured the top; then we took the measurement from the stump to the top—that is, we took the length between the stump and the top, divided that into 16 foot logs, sometimes one, two or three or four, whatever the size of the stump was; then we took and subtracted

(Testimony of U. S. Swartz.)

the diameter of the top from the measurement across the stump, taking the difference between the [58] top and the stump and divided it by the number of logs that would be in this tree, 16 foot logs; taking the answer to that and using it as a basis to scale those logs; for instance, if we had a 20 inch stump and an 8 inch top with three 16 logs between them, we would subtract the 8 from the 20, leaving 12, divide by 3, which would leave us 4 inches from the first log from the butt, 4 inches from the 20 would leave a 16 inch log, the next would be a 12 inch log, and the top would be an 8 inch log; then we took this decimal "C" rule and scaled each one of those logs. The decimal "C" rule is the established rule for timber measurements and scaling logs. We would get just as many of those 20 inch stumps as we could. We started at a 12 inch stump and went up. If we could get 20 we would get it, and if we could get 100 we would get it. They would all have different tops. When we got that we would scale each log separately. We added the whole together and divided that by the number of stumps that we had scaled and the number of trees, whether 20, 40 or 100, and that gave us an average tree, what was in an average tree of that size of stump and put that on this rule, and then when we came to where we could not find the tops, we put this rule on it, that is, we would measure the stump and the logs according to our rule and that would give us the amount, the average amount that was in that tree when it stood on that stump, according to this rule. In the practical use of this rule, I laid it



(Testimony of U. S. Swartz.)

across the top of the stump on the lands that were designated to me as the lands which I should scale, and if the stump would measure twelve inches across the top, I then calculated that there was one hundred and twenty feet, board measure, of lumber in the trees cut from that stump. This system was adopted from all rules of trespass scaling that I have had anything to do with. Where we cannot find the [59] tops, we get up a rule of this kind in order to scale those trees. From my experience as a scaler, I state that that system which I adopted is approximately accurate—as near as you can make it. It is not exactly accurate, but it is as near as you can get it. I do not know of any other system by which I might have more accurately ascertained from the measurement of the stump the amount of board measure in the tree. It is not intended to be a method whereby accurate measurements may be obtained; but just approximate measurements can be arrived at where the body of the tree has disappeared and the top as well. I did some actual scaling myself and have my notes covering my scaling. This scaling was all confined to lands that are covered in the complaint. The following are the number of stumps counted and the contents in board measure feet which I estimated as having been contained in the trees represented by said stumps, on the following described subdivisions of land, respectively:

Section 6, township 11 north, range 15 west, M. P. M., 1650 stumps; 891,360 ft., board measure. Section 20, township 11 north, range 15 west, M. P. M., 42



(Testimony of U. S. Swartz.)

stumps; 21,820 ft., board measure. Section 22, township 11 north, range 15 west, M. P. M., 1508 stumps; 1,033,590 ft., board measure. East half of the northwest quarter of section 18, township 13 north, range 14 west, M. P. M., 1,393 stumps; 714,060 ft., board measure. Northwest quarter of section 2, township 11 north, range 16 west, M. P. M., 249 stumps; 148,540 ft., board measure.

That was all that I scaled personally. On all these sections that had been surveyed, I traced the section lines and subdivided the sections where there was not a full section. Where a full section was cut over, I just traced the lines around the section; those that **were only parts of sections**, I subdivided. [60] This running out of the lines I did before doing the scaling. There were other persons scaling with me in the same party and I did the surveying for their scaling and that surveying was done in the same manner as I have indicated.

#### Cross-examination.

I have no personal knowledge of any of the timber cut and that may have been taken off of any of these sections where I made the examination, as to who did it and when it was done. In going upon the land I found stumps where there were no tops upon the ground. The tops had disappeared some by fire; some had laid there on the side hills where they had rotted and disappeared that way and several different ways; it has been a long time and some had rotted away entirely, so that time had obliterated the tops, and I took the method that I did in

(Testimony of U. S. Swartz.)

order to get the nearest approximation to it that I could under the circumstances. I got merely an average approximation. Where there were no tops lying upon the ground, I found some tops in adjacent property; but I did not go outside of a mile, as I recollect it, from some part of the cutting. I examined the trees that had been cut and made an approximation from trees perhaps not outside of a mile from where these trees that I subsequently estimated had formerly stood. Then from that approximation I averaged the stumps on that property a mile away. Of course, where we could find a top on that property we measured that way. I knew of my own knowledge who cut some of the trees on the adjoining property, but not on the property in question.

#### Redirect Examination.

When I came to scale the stumps on any particular section I did not count and scale all the stumps that I found [61] upon that section. The only stumps that I did not scale and count were those that I knew had been cut in recent years. I had been in that country and had known of other cuttings subsequent to the time that it is alleged that the cuttings in controversy had taken place. On sections 6 and 8, township 11 north, range 15 west, I found cuttings that I did not scale. I did not scale those cuttings on said section 6 because they had been cut at a time after I came to the country—after the alleged cuttings in this case. I could see a difference in the physical characteristics between

(Testimony of Dan Graham.)

the stumps that I counted and the stumps that I did not count. The difference between those stumps was in the age, by the way they were decomposed and rotted—the stumps were rotten, portions of them.

**[Testimony of Dan Graham, for Plaintiff.]**

DAN GRAHAM, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

**Direct Examination.**

I reside at Missoula, Montana. I have been in the timber business pretty near all my life, and the character of the work I have done in the timber business has been pretty near everything. I have cruised and have been a foreman in the woods—timber cruiser, staging and working at everything; drove team, loaded logs. I have lived in the State of Montana since the fall of 1889. Prior to coming to Montana, I had experience in lumber business for several years in Minnesota and the State of Maine. Since I came to the State of Montana, I have been engaged in very little other work than the lumber business. I am acquainted with the country known as the Hellgate Canyon Valley; I first visited it in 1889. There was a lumber mill operating a short distance east of Bonita, on [62] the river, at that time. It was locally known around there as the Missoula Mercantile Company's or Hammond Mill. There was no other mill during that season that I know of, that logs which were being cut at that time in the vicinity of Tyler Creek by Henratty and Tillman could have been going to that season. I re-

(Testimony of Dan Graham.)

mained in the vicinity of Hellgate Canyon and the Bonita Mill from the fall of 1889 until the following summer. Since that time to the present time I have been back and forth over that country so many times that I cannot keep track of it now. I know the whole country. I have been familiar with the sawmills that have operated in Hellgate Canyon, in the vicinity of Bonita, beginning with 1889 until the present time. I never was employed at the Bonita Mill, situated on section 14. I was employed by the Government in 1909 to do scaling in connection with some of the lands involved in this case.

Q. About how long had you been scaling in the vicinity of the town of Missoula, timber of the same kind and character as the timber that was scaled by you in this case?

A. I think I was working three summers right in that vicinity.

(Witness Continuing:) After that I was working in other places for L. L. Sharp, who was chief of the Field Division for the Government.

Q. Outside of your work for the Government, how long had you been scaling timber of this kind and character in the vicinity of these lands?

A. I had done some scaling of logs, but none of stumps.

(Witness Continuing:) Mr. Bennett had charge of the outfit in connection [63] with which I did the scaling in this case. Mr. Swartz located the lands as to the sections and fractional parts of sections that I was to scale. The method as to which



(Testimony of Dan Graham.)

I should conduct my scaling was gone over in the office at Helena and Mr. Swartz, Mr. Bennett and Mr. Sharp agreed upon this scaling. I used a Scribner decimal "C" rule in my scaling and I made notes in the field of the scaling. The figures are my own figures and the computations and multiplications are my own. The following are the number of stumps counted and the contents in board measure feet which I estimated as having been contained in the trees represented by said stumps, on the following described subdivisions of land, respectively:

Section 8, township 11 north, range 15 west, M. P. M., 1622 stumps; 896,000 ft., board measure. Section 18, township 11 north, range 15 west, M. P. M., 183 stumps; 69,510 ft., board measure. West half of section 26, township 11 north, range 15 west, M. P. M., 540 stumps; 349,470 ft., board measure. Section 10, township 11 north, range 16 west, M. P. M., 1206 stumps; 722,640 ft., board measure. Section 12, township 11 north, range 16 west, M. P. M., 1029 stumps; 707,120 ft., board measure. South half of section 14; township 11 north, range 16 west, M. P. M., 1068 stumps; 954,510 ft., board measure. West half of the northwest quarter of section 18, township 13 north, range 14 west, M. P. M., 1553 stumps; 993,360 ft., board measure. In the south half of section 18, township 14 north, range 15 west, M. P. M., [64] the following:

Lot 7,-411 stumps; 273,840 ft., board measure. Lot 8,-319 stumps, 186,530 ft., board measure. Lot 9,-294 stumps; 161,340 ft. board measure. Lot



(Testimony of Dan Graham.)

10,—408 stumps; 193,390 ft., board measure. Lot 11,—499 stumps; 268,520 ft., board measure. Lot 12,—797 stumps; 395,980 ft., board measure.

Northwest quarter of section 34, township 14 north, range 14 west, M. P. M., 2,486 stumps; 1,600,280 ft., board measure. North of the river on section 28, township 14 north, range 16 west, M. P. M., 972 stumps; 566,080 ft., board measure, being a fractional part of the section. I don't know how many acres there were there that I scaled.

Mr. HALL.—The record may show that the Government desires to eliminate from this suit all of the timber that was cut off on the south half of the south half, and the north half of the southeast quarter, and the west half of the northeast quarter of section 22, township 14 north, range 14 west, M. P. M. We only claim that we are entitled to recover for the timber cut from the east half of the northeast quarter of section 22.

(Witness Continuing:) I rescaled the said east half of the northeast quarter. In the north forty acres of the tract last mentioned I counted 24 stumps, estimating the contents at 20,790 ft., board measure; in the south forty acres of said tract last mentioned, I counted 504 stumps, estimated at 335,900 ft., board measure, or a total of 528 stumps and 356,690 ft. board measure, for the said east half of the northeast quarter of section 22, township 14 north, range 14 west, M. P. M.

Wednesday, January 15, 1913. [65]

Q. In the scaling you did in the Hellgate country,

(Testimony of Dan Graham.)

did you eliminate from your scaling or your count of stumps any particular class of stumps?

A. Yes, there was quite a difference in the rotting of the stumps and the soundest stumps I cut out.

(Witness Continuing:) I knew of a lot of cutting that was done there in the Hellgate country subsequent to the year 1894, and in my scaling in the Hellgate country, I excluded, in making my scaling, cuttings I knew to be subsequent to 1894. I excluded some on section 26, township 11 north, range 15 west, and there were some stumps on section 18, township 11 north, range 15 west, that I did not include in my scaling. In my rescaling of the south half of section 18, township 14 north, range 15 west, I made an examination of the stumps found on the different portions of the section having regard to the different times at which those trees may have been cut. On lots 11 and 12, the stumps were more rotten there than they were on the other portion. There was also more second growth, that is, young trees, that come up, more on that part of the ground than they had on the other. It was also cut cleaner than the other portions of the south half of 18. These lots, 11 and 12, are in the southeast corner of the section. The common name applied to the land embraced in the southeast corner of said section 18 was the Tuchenhausen claim—Tuchenhausen was the name of the man who located it. I found on this section 18 that the older cutting had taken place on lots 11 and 12—that is, the Tuchenhausen claim. By older cutting I mean that on which the stumps were

(Testimony of Dan Graham.)

more rotten and upon which more second growth—  
young timber—had come up. [66]

Q. From your experience as a scaler of timber,  
can you judge from what you observed on section  
18 there, which portion of the section had been cut  
first?

To which question defendant objected on the  
ground that it was incompetent, irrelevant and im-  
material.

Thereupon the Court overruled said objection; to  
which ruling the Court defendant duly excepted.

**Defendant's Exception No. 1-A.**

A. On the southeast quarter of these lots.

Q. From your experience, can you tell the time  
that had elapsed between the first cutting and the  
second cutting?

To which question defendant objected on the  
ground that it was incompetent, irrelevant and im-  
material.

Thereupon the Court overruled said objection; to  
which ruling of the Court defendant duly excepted.

**Defendant's Exception No. 1-B.**

A. Well, in my judgment, it would be somewhere  
about five or six years.

(Witness Continuing:) I have been along the  
Hellgate River from the year 1889 until the present  
time a good deal of the time, and during that time  
have learned the names that are locally used in the  
Hellgate Canyon in designating gulches, canyons  
and streams. I know the gulch called the Cramer  
Gulch. It was located in sections 2 and 10, town-

(Testimony of William Greene.)

ship 11 north, range 16 west, M. P. M. Rich's Gulch, with which I am familiar, is located in sections 6 and 7, township 11 north, range 15 west, M. P. M. Strong's Gulch is in sections 2 and 8, township 11 north, range 15 west, M. P. M. Medicine Tree Hill is in section 22 and extends into section 23, township 11 north, range 15 west, M. P. M. Beaver Tail Hill is in sections 2 and 10, township 11 north, [67] range 16 west, M. P. M., and Tyler Gulch is in sections 26 and 23, township 11 north, range 15 west, M. P. M. There was no mill below any of the lands I have spoken of in the fall of 1889, except the Bonita Mill. It was locally known as the Bonita Mill and the Missoula Mercantile Company's Mill or the Hammond Mill. The summer of 1890 was the first year that I went to the Bonita Mill. I did not meet Mr. Fenwick there.

#### Cross-examination.

As to whether or not G. W. Fenwick was the owner of the Bonita Mill at the time of my arrival there, I know nothing about that. For all that I know, the mill might have belonged to any man. I don't know anything about it. The process by which I made my count was by measuring each stump with this rule and then I put a piece of bark or a chip or a rock or something on it to know that was the one I had scaled, so that I would not scale it again. Coppering is what we call it. I don't suppose I counted every stump. I did not count any one stump twice. I would say that the number of stumps that I counted were all within the lands that



(Testimony of Dan Graham.)

I knew to be Government lands. I have had experience in the woods and I know there are a great many trees that are thrown down that are not sound and have proved to be rotten after they are thrown down.

Q. Now, then, in the method of count that you took, where the tops had disappeared or rotted away and removed the remains, or where fire had swept over and taken it out, you would not know but that some of the stumps that you counted had belonged to a tree that had been rotted away, would you?

A. Well, if there was anything there to indicate it, we cut it out. I cut it out anyway. [68]

Q. But if there was anything there, you measured it?

A. Well, if the stump was there, I measured the stump.

Q. You measured it notwithstanding the fact that it may have belonged to a rotten tree from which a foot of log had never been taken?

A. If there was anything there to show it, that it was a rotten tree, I would cut it out.

Q. Very often ten or fifteen feet up a tree the rot begins? A. Yes, sometimes it does.

(Witness Continuing:) My method of making the measurements of the logs was the same as that testified to by Mr. Swartz. I assisted him in making the measurements that went to make up that rule.

Q. Did you go on any of these lands that are here involved and make any measurements, or did you



(Testimony of Dan Graham.)

take your measurements from the lands not here involved?

A. We took some on 14-11-16, that I know of, and we took some on section 35-12-16, that would be just up north of section 2, adjoining section 2 in the next township north. It was hard to find trees that had the tops left in that country. We had to make our rule up from measurements taken from trees where we could find the tops. If a tree is cut on a side hill, the top will sometimes go a quarter of a mile away. That is, when the tree is felled, it will roll down the hill and we had to go on level ground.

Q. Mr. Swartz made the computations and gave you the average, and from that average you made your calculations here? [69]      A. Yes.

Thereupon defendant moved to strike out the testimony of the witness and conclusions made by him, upon the ground that they are hearsay, irrelevant, incompetent and immaterial; which motion was denied by the Court; to which ruling of the Court defendant duly excepted.

#### **Defendant's Exception No. 1-C.**

(Witness Continuing:) In making my count, I measured all of the stumps except those that were destroyed by fire or that were decayed. I did not measure those. That part of the stump that remained, I measured by placing my rule across the top of the stump and measuring from one edge to the other, and I made no measurement in any instance where the stump was so far gone that there was not a sufficient basis to make a measurement.

(Testimony of Dan Graham.)

Redirect Examination.

A stump usually rots on the outside if it has been a sound tree. There are instances when a stump will decay from the middle or the heart. When a stump rots, there will be a shell on the outside that stands up and then there will be a rotting inside for an inch or two, and it might rot from there in. That shell will stand up there, and unless it is destroyed by fire, will stand up there for quite a long time. That is by reason of the harder character of the outside of the shell, and the shell remaining there is indicative of the size of the tree that had stood there. [70]

**[Testimony of William Greene, for Plaintiff.]**

WILLIAM GREENE, a witness called on behalf of plaintiff, on the said 15th day of January, 1913, being first duly sworn, testified as follows:

Direct Examination.

I am a lumberman, residing at Missoula, Montana, and have been engaged in this business pretty near all my life. I have done scaling. I was employed by the United States Government to do scaling in the vicinity of the Hellgate Canyon country and the Big Blackfoot River country. It was in 1909. Mr. Graham and Mr. Swartz were associated with me in doing this scaling. It was under the direction and supervision of Mr. Bennett. In scaling I used a rule similar to the one testified to by Mr. Swartz and Mr. Graham, and used it in the same manner. The following are the number of stumps counted and the contents in board measure feet which I estimated

(Testimony of William Greene.)

as having been contained in the trees represented by said stumps, on the following described subdivisions of land, respectively:

East half of section 26, township 11 north, range 15 west, M. P. M., 142 stumps; 93,160 ft., board measure. Section 2, township 11 north, range 16 west, M. P. M., 3,436 stumps; 1,714,100 ft., board measure. North half of section 14, township 11 north, range 16 west, M. P. M., 1,779 stumps; 682,080 ft., board measure. Southeast quarter of section 28, townships 14 north, range 14 west, M. P. M., 2,620 stumps; 1,557,025 ft., board measure. South half of section 20, township 14 north, range 15 west, M. P. M., 1,801 stumps; 469,750 ft., board measure. North half of the northeast quarter of section 26, township 14 north, range 16 west, M. P. M., 414 stumps; 199,960 ft., board measure. [71] I was employed in logging in the vicinity of the Bonita Mill. I think it was in 1889 that I first commenced my employment there. I was employed by Mr. Fenwick. My duties were to drive team. I do not know what section or description of land any timber was taken from that time; but I do know some places which were designated by local names from which timber was taken at that time. The first timber was taken in the Cramer Gulch. I drove a team there. I worked there about three weeks and then I went into the yard and then I went to the mill and went to work. As to the season of the year when I worked in the timber in Cramer Gulch, it was when we got it out on sleds. I do not

(Testimony of William Greene.)

know how much approximately was taken out of the gulch at that time; but the logs went to the Bonita Mill. I worked in the yard at the Bonita Mill the majority of that winter. After the winter's work was finished, I went on the trucks, trucking work—this was across the river from the mill—what they now call 14. The logs that I had been working on were cut in the spring of 1890. The logs went to the Bonita Mill. The logs were taken from section 14. I continued working in and about the Bonita Mill about a year and a half. While I was working at the Bonita Mill, I was paid by means of a bank check. Most of my checks I cashed in Bonita at W. A. Cook's. I know of no other land from which logs were taken to the Bonita Mill, only from section 14 and out of Cramer Gulch.

I worked in the Big Blackfoot country commencing in 1887 and was employed to work in that country by Mr. A. B. Hammond. My immediate superior in the woods was Cunningham. He was the general manager. The camp was located at Fish Creek and was known as Headquarters Camp. Cunningham was in charge [72] at that time. At that time we were not doing any logging. We were building a bridge across the Blackfoot River. We had to build that bridge first. I worked somewhere about three weeks on that, and when it was completed I went down to Cannas Prairie and worked for Pat Hayes, who was logging. That was in the year 1887. I remained at Pat Hayes' camp all winter and until the spring. I could not say from what lands he was



(Testimony of William Greene.)

logging at that time. Pat Hayes was supposed to be logging for the man I was working for. I don't know, but that is what I supposed, and that was Mr. A. B. Hammond. He was the man I was employed by. I think it was George Hammond, my walking boss, who directed me to work for Pat Hayes, and I remained with Hayes from the fall until the spring, which brings me to the spring of 1888, and I helped to drive logs that spring. The logs went to the Bonner Mill. There was no other mill that I know of at Bonner except the mill controlled and known as the Hammond Mill, and there was no other mill at that time to which these logs could have been driven. After I finished the drive in 1888, I went back to Blackfoot again, and was stationed at Headquarters Camp—Fish Creek Camp, and I was working in the woods—putting logs into the Clear Water until the next drive started. I was working there out of Fish Creek Camp. The drive started somewhere the latter end of June or the first of May. It was after the highwater got over. I drove the logs down the river within two miles of Bonner. The logs went to Bonner. My next work, I went back to Fish Creek Camp and worked that summer skidding logs. The locality from which these logs were skidded was commonly known as down near what we call the Sontag Ranch, back of the Sontag Ranch. That was in 1888. The Sontag Ranch was located [73] on Section 22. I think it was east of the Sontag Ranch house that the logs were cut. My next work was for a man named McLaughlin, on the Clear Water, on what is called



(Testimony of William Greene.)

Blanchard Creek. I worked there all that winter until the spring.

Mr. HALL.—I understand from what this witness has told me and what the other witnesses have told me, that the Government has no right to recover for the southeast quarter of section 8, township 14 north, range 14 west.

Mr. WHEELER.—That is one of the places where we have been charged with having cut lumber. Will you admit that there never has been any timber cut on there?

Mr. HALL.—No; you have cut that quarter section; also the northwest quarter of section 2 in the same township and range.

The COURT.—You say now that you abandon any right to recover on this quarter section of 8?

Mr. HALL.—Yes; on the southeast quarter of section 8; and also on the northwest quarter of section 2.

Mr. WHEELER.—In order to save me from going into proof in regard to the northwest quarter of section 2, will you now admit at this time, that on the northwest quarter of section 2 there has never been cut any timber?

Mr. HALL.—I can swear to that personally myself.

(Witness Continuing:) After I finished my work for Mr. McLaughlin, I drove out of the Clear Water in the spring of 1889 for these same people. The drive went to Bonner. This terminated my work in the Blackfoot country and I never went back there after that. While working on the Blackfoot, I was paid for [74] my services during all the time I

(Testimony of William Greene.)

was there by receiving a time check on a concern supposed to be the Missoula Mercantile Company. It was paid by the Missoula Mercantile Company in its office in Missoula. Mr. John Keith had charge of the adjustment of the payment of my time checks.

Concerning the Bonita cutting, the lands that I worked on in the vicinity of the Bonita Mill, I recognized as the same lands at the time I did scaling for the Government. I knew the country.

Cross-examination.

When I first went to work in and about the Bonita Mill, I think in 1889, Mr. Fenwick and Mr. Graham were the only two men I knew there running that business. I don't recollect of ever seeing Mr. A. B. Hammond there. I don't recollect that I ever saw Mr. Fred Hammond there. He may have been there and it slipped my memory. I could not say.

Q. What was Mr. Fenwick's duty there?

Ans. It appeared as though he owned that saw-mill.

(Witness Continuing:) The man who employed me first in the woods there was Mr. Graham, and he seemed to be the man who was superintending the business for Mr. Fenwick. I understood Graham to be the manager, general manager, around there. When I was paid, I got a bank check and I cashed it at Cook's saloon, about a mile or a mile and a quarter from the mill. Mr. Graham handed the check to me sometimes, and they had a bookkeeper up there by the name of Fowler and he gave it to me sometimes. There was a small store at the mill and there

(Testimony of William Greene.)

was a man in charge selling the goods. Mr. Graham seemed to be the head man. Mr. Fenwick was pretty much around there all the time in 1889. [75]

When I was employed in the Blackfoot country, Mr. A. B. Hammond hired me right in Missoula. At the time he hired me it was on the sidewalk in Missoula. Missoula is some twenty-six or twenty-eight miles away from the Hellgate country and seven miles away from the Bonner Mill. When I was employed by Mr. A. B. Hammond, I went up to him and asked him if he wanted any more men in the woods, up at the camp; he said he did and he took my name down and I went up and went to work. He told me to go to Headquarters Camp. That was the Fish Creek at that time. I don't recollect ever seeing Mr. W. H. Hammond up there in the woods. I saw him at Bonner at the mill that cut the logs that I was working on. I don't know whether W. H. Hammond owned the mill or not. I could not say of my own knowledge whether A. B. Hammond owned the mill or not; nor do I know whether the Blackfoot Milling and Manufacturing Company owned it. I don't know who owned the mill. I just know who I worked for. That is all. When I went up into the woods I did not know the particular work I was hired for. I had not been hired for any particular work. I was merely told that men were needed. I knew the rates of wages that were paid to men in different lines of employment. I had been a teamster at times and also a logger. Teamsters usually got \$40.00 or \$45.00 a month, and the other men that were supposed to be

(Testimony of William Greene.)

mill swampers and cant-hook men, got \$35.00 or \$40.00 a month, just according to the men.

Q. You did not know what you were going to get when you left Missoula and reached Fish Creek, or Headquarters Camp?

Ans. I was told after I got there that I would only get \$35.00 a month, but when I was up there for a while they [76] put me driving team and then I got \$40.00 a month.

(Witness Continuing:) Mr. A. B. Hammond did not tell me at what rate I was employed—did not tell me whether I should drive a team or work with an ax. I learned what work I was to do when I got up there and what wages I would receive, from John Cunningham, who was the foreman.

The COURT.—Did Cunningham know that you were sent up there by Mr. Hammond—did he give you a note or anything of the kind?

Ans. No, sir; there was a whole crew of us went up there to go to work. They were just starting a new camp and they needed men to work.

Mr. WHEELER.—You heard that men were wanted and you went to get the job?

Ans. I went there to see him; yes, sir. We had no particular conversation. I said in substance: "Do you want any more men to go up in the woods?" And he said, "Yes," and put my name down. Nobody told me to go to Bonner. I knew the road up there and which way to go. George Hammond was supposed to be the walking boss for the Blackfoot outfit and he was along with us at that time. He took



(Testimony of William Greene.)

us up. We went up along with him and it was George Hammond who told me to go to the Fish Creek Camp headquarters. After I got through with one job I would be out of work for just a little while. I would move from one camp to another. When I was ordered off one job I would have to be hired again for another job. The foreman that was running the camp was the one that put me to work at the different places where I worked. I have heard of the Blackfoot Milling and Manufacturing Company. I could [77] not say that I ever heard that that company at that time was concerned with any of these outfits. The Missoula Mercantile Company was all I ever heard the outfit called as the owner at that time. I heard mention made of the Montana Improvement Company, but that is all. I don't know anything about it; and I also heard, in the same way, of the Blackfoot Milling and Manufacturing Company. I also heard of W. H. Hammond being in charge of the Bonner Mill. I had heard of the Blackfoot Milling and Manufacturing Company before I went up there on this first occasion. But I knew nothing about it any more than I heard of it. While I was working over on the Blackfoot I don't recollect that I ever saw A. B. Hammond there. While I was working on the Blackfoot in the different occupations that I have testified to and where I sawed or helped take logs or timber from any land. I did not know to whom any of that land belonged; I don't know whether it was railroad land or land privately owned by individuals or Government land.



(Testimony of William Greene.)

Redirect Examination.

As to going from the State of Minnesota to the State of Montana, Mr. Thomas Hathaway was in the State of Minnesota, at Stillwater, and he got me to come out to Montana.

**[Testimony of R. K. McLaughlin, for Plaintiff.]**

R. K. McLAUGHLIN, a witness called on behalf of plaintiff on the said 15th day of January, 1913, being first duly sworn, testified as follows:

Direct Examination.

I reside in Idaho and am engaged in mining. I first went to the State of Montana about the year 1880, and after I went there I engaged in the lumber business, practically. I was driving teams and engaged in other branches of it. I was employed in lumbering in the Blackfoot River country. I was [78] working at the time for George Hammond, and as near as I can recollect, at the Blackfoot he was the foreman. The first place I worked when George Hammond was foreman was on the Blackfoot River, at Headquarters Camp. I would not be positive as to the year I commenced work there. George Hammond was in charge when I went there. The camp had been in existence about one year, as near as I can remember. The first year while I was working at Headquarters Camp I hauled in some supplies. The second season I was there, I drove team from the Headquarters Camp. I was hauling logs. The first season I hauled these logs from sec-

(Testimony of R. K. McLaughlin.)

tion 27—Robert Moore was the foreman. I don't know the range.

Mr. WHEELER.—Just to clear that up, we will admit that is a part of the railroad land in the Blackfoot country, if counsel desires the admission.

Mr. HALL.—Yes.

(Witness Continuing:) It has been so long since I have been there, I would not be positive whether at any time while I was employed at Headquarters Camp I hauled any logs from the land that I knew as the Edgar claim—but it was in that direction. I have been on the Edgar claim—was acquainted with it. It was located south, as near as I can remember, from the Fish Creek Camp, or Headquarters Camp—somewhere in the neighborhood of a mile, or inside of that. As to whether at any time while I was working in Headquarters Camp I hauled logs from lands adjacent to the Edgar claim, I would not be positive without going over the ground. I think along in 1888 I built camps on Clearwater Creek; that was on section 5. I left the Blackfoot country the spring following the time I built McLaughlin Camp, and I [79] never returned after that period to work for these people, who were conducting these lumbering operations in the Blackfoot. During the time I was working in the timber up the Blackfoot, I was paid by what is called the “M. M. Store,” that is the Missoula Mercantile Company at the present time. During the time I was working there I did not have any conversation with A. B. Hammond in regard to the work when I was in the woods. Once in a while

(Testimony of R. K. McLaughlin.)

we would have some talk, but practically my business was all done with Henry Hammond and George, but we had a little conversation. I could not remember what those conversations were and when they were had, it has been so long ago. I know I can remember having a talk with the man, but it has been so many years ago, I would not like to say in regard to it I had a conversation with Mr. Hammond in Missoula in regard to some horses. I was sent down with some horses from the Blackfoot River by George Hammond, and they were placed in Mr. A. B. Hammond's barns. Those horses were there for sale. Mr. Hammond knew I brought the horses down there and told me to fix the horses up, that they were for sale, and to get them in shape, and then put them on the market for sale. They were sold that spring. The horses came from Headquarters Camp. They had been used in the Blackfoot River for logging purposes. They assisted in the drive while I was logging up the Blackfoot. The logs that I drove down the river went to the Blackfoot Mill. At that time there was no other mill than the Bonner Mill situated on the Blackfoot River.

Cross-examination.

I saw Mr. A. B. Hammond in the woods on the Blackfoot. I would not want to make an affidavit as to the time I saw him. The circumstances were such that I should judge that he was just [80] up there on a general inspection.

Q. Did you notice where he went?

(Testimony of R. K. McLaughlin.)

Ans. Well, that was the only time I ever saw him drive up to the camp where I was working.

(Witness Continuing:) That was while they were working there at Clearwater Camp, on section 5. Mr. A. B. Hammond did not tell me to go into the woods, or where to log, or where to haul, Henry Hammond was in charge of the mill on the Blackfoot, which was known by the name of the Blackfoot Milling Company. I testified that the Headquarters Camp had been running somewhere in the neighborhood of a year before I went there, but I would not be certain. I had never been there before this first trip, when I entered into the employment of the man who was running that camp. I do not know of my own knowledge that I had been there a year. I cannot definitely remember the year that I first went up the Blackfoot. I have drifted out of the lumber business and am in the mining business, and I tried to forget it as soon as I practically could. I remember the Edgar claim. Mr. Edgar lived on the claim and his wife was all the family he had. When I was there I noticed his improvements in the place. He had a small barn and he had built the camp where he and his wife lived, a nice comfortable little place built of logs. There was snow over the ground when I saw it, so I did not notice his vegetable garden or truck garden, if he had one. I don't remember noticing an enclosure fence there at the time.

Q. You say that you were paid by the Missoula Mercantile store, commonly called by you the "M. M. store." Tell us just exactly how that was done,



(Testimony of R. K. McLaughlin.)

what did you get in the [81] way of a paper or a time check?

Ans. No, my time was all forwarded there.

Q. Did you have any paper at all from the Blackfoot Company?

Ans. No, sir; I never got any time when I was in the Blackfoot River country, to my recollection. Everything was forwarded to Missoula.

(Witness Continuing:) When I went to Missoula and to the Missoula Mercantile Company's store there, John Keith was the man I asked for, in order to get my money. I do not remember signing any papers, any receipts, when I got my money. They gave me my money, and I did not get any papers. While I say that my time was sent to the store, I never saw in what form it was sent. I do not know anything with reference to the arrangements between the corporation called the Missoula Mercantile Company and the Blackfoot Milling and Manufacturing Company. I don't know whether they were connected in any way at all or not. So far as I know, they may have been separate corporations, with a business arrangement between them whereby the Missoula Mercantile Company would pay the time checks or the time of the Blackfoot Milling and Manufacturing Company. We are not supposed to know all about those things.

Q. Do you know whether or not it was the Blackfoot Milling and Manufacturing Company which was operating in the woods there, or Mr. Henry Hammond under a lease from the Blackfoot Milling and



(Testimony of R. K. McLaughlin.)

Manufacturing Company?

Ans. I don't know whether Henry Hammond had a lease at that time or not.

Q. At one time you did understand that Henry [82] Hammond had a lease, didn't you?

Ans. Not when I was there.

Q. You did understand at some time that he had leased that property?

Ans. I have heard that; yes.

(Witness Continuing:) I never saw any papers while I was there. I never saw my time papers.

Redirect Examination.

It was A. B. Hammond told me the price at which these horses that were sent in from the Blackfoot country were to be sold.

Recross-examination.

Regarding this horse transaction, I came to take these horses into Missoula because I was ordered to do so by George Hammond. To the best of my knowledge they belonged to the Blackfoot Milling Company at the time I started with them for Missoula. My impression was that that Company owned them. All the stock and everything that had been used practically belonged to them. They did not hire no horses at that time. My understanding was that the Blackfoot Milling and Manufacturing Company at that time owned everything that was on the river; but it was a matter of opinion and not a matter that is within my own knowledge. It was my opinion that the stable I put the horses in when I went over to Missoula was owned by A. B. Hammond. I could

(Testimony of R. K. McLaughlin.)

not say positively whether it was his private barn or not, or was something that was used by the Missoula Mercantile Company; but it was used for those purposes. It was a barn that would [83] hold maybe a dozen horses. It was close to his residence. I do not know who had the actual title to the barn. It was George Hammond ordered me to put them in that barn. My talk with Mr. A. B. Hammond about the horses was to the effect that I was to put the horses in the barn there and was to clean them up and take care of them and get them ready for sale. A. B. Hammond told me the price of the horses. He set the prices on the horses. I do not remember what price was set on them. That is over twenty years ago. I do not know who A. B. Hammond was acting for, whether it was for himself individually or for the Company, or for Henry Hammond.

#### Redirect Examination.

Mr. A. B. Hammond told me I had better go over and stop at the Florence Hotel, instead of at the Rankin Hotel, across from the Mercantile Company, because it would be handier there when they would want me. As near as I can remember, that is the words he used.

**[Testimony of Sidney C. Mitchell, for Plaintiff.]**

SIDNEY C. MITCHELL, a witness called on behalf of plaintiff on the said 15th day of January, 1913, after being first duly sworn, testified as follows:

#### Direct Examination.

I reside at Oroville, Washington, and am a retail

(Testimony of Sidney C. Mitchell.)

lumber merchant. Once I resided in the State of Montana. I was working at Wallace at that time for the Eddy-Hammond Company. Mr. A. B. Hammond employed me to work at Wallace for the Eddy-Hammond Company. I commenced work for them about June 17. My duties were to keep the time and take care of the commissary, and small store supplying to sawmills. One sawmill was located at Wallace and one about a mile and a half west of Wallace. I [84] remained at Wallace in this employment until about the middle of December. Then I went to Missoula. I never worked for the Eddy-Hammond Company or the Missoula Mercantile Company afterwards. I was at one time employed about the Bonita Mill. I first commenced to work there about May or June of the following year, 1886. I was working there as a laborer. Mr. Fenwick hired me to work at the Bonita Mill and I continued working there as a laborer until about August 1st. My duties were running the slab car and edging car. Part of the time I was in the cook-house. At that time I did not know from what lands the logs that were being sawed had been taken. After I ceased to be employed as a common laborer at the Bonita Mill, about the first of the year, 1887, I went to work again at the Bonita Mill as a flunkey, working in the boarding-house. In the spring of that year, Mr. Fenwick gave me the commissary to look out for and some scaling work to do. The accounts that I had charge of were kept in what you would call a single entry ledger work, single entry bookkeeping. The commis-

(Testimony of Sidney C. Mitchell.)

sary accounts that I kept were not, and no other accounts that I kept were transmitted to any other person or concern. They were not transferred. I was not familiar with the keeping of the lumber accounts during the time I was there. I used to make a statement of the shipments and forward that to the Missoula office. I am not clear as to whether I made those statements of the shipments or whether Mr. Fenwick made them, but I am under the impression that I made those and mailed them myself. They were mailed to the Missoula Mercantile Company. We are speaking of the year 1887. I continued to transmit these shipment statements to the Missoula Mercantile Company until I quit, about December [85] 1st. I was let out. Later, about 1890 or 1891, I went back to work at the Bonita Mill again. I was there just about two or three weeks. Mr. William Graham was in charge and they wanted me fix them up some books. I do not remember who directed that I should go up there and fix up those books. I was not working anywhere when I was sent up there. I think Mr. Graham hired me in Missoula to go up and fix them up for a short time. As to the character of the books that I fixed up for Mr. Graham, they were just an ordinary small set of books to keep track of the mill employees, the commissary bills and the record of lumber shipments. I do not know how the lumber shipment records were kept after I fixed up those books or during the time I was fixing them up. I never saw the book any more after that. I do not remember whether during the time



(Testimony of Sidney C. Mitchell.)

I was there fixing up the books, that is, two or three weeks, there was any record made of the shipments then.

I was employed at the Bonner Mill, commencing work in the fall of 1886.

Q. Who employed you?

Ans. Henry Hammond; no, I have forgotten who sent me up there. I was sent up from Missoula, but I have forgotten who sent me up. Mr. Henry Hammond, I think.

(Witness continuing:) He was in charge of the mill and fixed the compensation and put me to work as a flunkey. At that time I did not have charge of any of the books at the Bonner Mill, but I did later on, that is to say, I did not have charge, I was a book-keeper there. That was in the spring of 1889. I know that shipments of lumber were made from the Bonner Mill. In 1889 I believe shipments were made in the name of W. H. Hammond [86] Hammond & Company. The invoices were made regularly at the mill, if I remember right, and forwarded to the Missoula Mercantile Company, to the lumber office. I don't remember how it was carried on now, but they were sent to Missoula and the lumber office in Missoula distributed the invoices. This lumber office was in the office of the Missoula Mercantile Company. I was employed in the office, in the lumber department of the Missoula Mercantile Company from the fall of 1887 until sometime in January, I think about the 20th of January, 1888. From the time I left Mr. Fenwick at Bonita, until sometime in January, 1888.



(Testimony of Sidney C. Mitchell.)

It was in December and a part of January. I was an assistant in the office of Mr. Winstanley. He had charge of that office; it was located in the office of the store of the Missoula Mercantile Company—the same room. I do not know what relation existed between that business about which I was employed and the Missoula Mercantile Company. My duties were to check up the shipments of accounts that came in with invoices for the lumber shipments and to credit them up to the different sawmills and take care of the different mill company's books that were handled through the department. I do not know if that was a department of the Missoula Mercantile Company. I don't remember any shipments from the Bonita Mill handled in that department during December, 1887, and January, 1888, but there was some from the Blackfoot Mill, that is, the Bonner Mill. I remained at the Bonner Mill until sometime during the year 1890, and after I quit the Bonner Mill I went to the E. F. Rutherford Lumber Yard in Missoula. I don't remember if that was the name of it or not, but I think it was. I do not know who owned it. Dan Ross was [87] in charge of it. In that lumber-yard we received shipments of lumber from the Bonner, but not the Bonita Mill. I do not know whether or not the lumber-yard that I was employed in then accounted to the Missoula Mercantile Company for the lumber it sold at retail.

Q. To whom were those accounts rendered, if any-one?

Ans. Well, I never saw any of the Hammonds.

(Testimony of Sidney C. Mitchell.)

there except Mr. Henry Hammond. I never had anything to do with him. Everything was done with Mr. Ross.

(Witness Continuing:) Going back to the first time that I went up to the Bonita Mill, in 1885, Mr. Fred Hammond was in charge of it at that time. Mr. Kenneth Ross was there. I understood his duties to be the logging foreman, in charge of the woods.

Q. From whom did you receive your directions about your work in 1885, at the Bonita Mill?

Ans. Mr. Henry Hammond sent me up there to fix up his commissary books and help out Mr. Fowler.

(Witness Continuing:) I do not remember just now of having received any instructions from Fred A. Hammond. I did not know anything of a corporation known as the Montana Improvement Company. I don't know who the officers of that Company were or are. The Montana Improvement Company, I do not know anything about it.

Q. During these years you were employed at the Bonner and Bonita Mills, where were you paid and in what manner?

Ans. Well, at the Wallace Mill we were paid with an [88] order on the store—the Missoula Mercantile Company.

Q. Go on and tell just what took place.

Ans. I think that was continued, that form was continued right along. I am not very positive about that now. I know that in 1885, when I went there, we were paid on an order. It was not a time check. It was an order for pay on the store, and they were

(Testimony of Sidney C. Mitchell.)

marked "Not Transferable." I am not sure as to how long that continued. Whether it continued right along or not, or whether they issued **bank** checks directly from the Blackfoot Milling and Manufacturing Company. I am not clear on that now. I believe these orders were continued during all of the time that I was at Bonita.

Cross-examination.

Wallace was on the Hellgate, near what is now Clinton. It is seven miles, I believe, upstream from the Bonita Mill. There were two mills at Wallace, one was No. 1 and the other No. 2. The time-books and commissary supplies for both mills were handled at Wallace, and while the foreman kept at No. 2 his own time-books, it was submitted at the end of the month for settlement to the office up there.

At that time I did not know anything about the Montana Improvement Company intelligently. While I spoke of being employed by the Eddy Hammond Company, it might have been that I was employed by the Montana Improvement Company. The reason I said the Eddy Hammond Company is because the store at that date was known by everybody as the Eddy-Hammond Company's store. The date I went up there, to the best of my recollection, is June 17th, the day after the first Blackfoot dam went out. In the year 1885, prior to August, the place [89] had been known as the Eddy-Hammond & Company's store. It was changed about then to the Missoula Mercantile Company. It was while it was the Eddy-Hammond & Company's store that I was employed

(Testimony of Sidney C. Mitchell.)

at the mill, prior to August, 1885, as far as I know. I do not know whether my employment was actually by Eddy-Hammond & Company, or whether it was the Montana Improvement Company. I had been at the Bonita Mill just for a couple of days in 1885 prior to the time that I went to work there in May or June, 1886. Mr. Henry Hammond sent me up there to assist the man that was keeping track of the commissary supplies and get the books posted up and get him straightened up a little. He had more work than he could attend to and I did not have much to do so I could help him out. I was employed by Henry Hammond and he sent me there. I went up there in the fall of 1885. I could not give you the month. It was not at the time they were moving and setting up the mill at Bonita. The mill was operated. It was in the fall. I went to work there the following year, in probably May or June. Fred H. Hammond was in charge there at the time I went to make those changes in the books. At that time there was a small store selling goods, wares and merchandise to the employees, and I fixed up its books of account. To the best of my recollection, I had been there only about two days on this occasion prior to the time that I was employed in the fall of the year 1886. In 1886 I went to work for Mr. George W. Fenwick, who is here in the courtroom. His headquarters were at the mill at that time. The same store was there at that time. I did not take charge of the store that year. You could get such supplies as a millman wanted, chewing tobacco and socks. It



(Testimony of Sidney C. Mitchell.)

[90] was a little merchandise supply store. I don't know whether there was a clerk in charge of it before I went there. I think Mr. Fenwick took care of everything himself at the time I went there. In 1886 I think Mr. Fenwick had charge of the store and attended to it as well as the mill. I don't think he had a clerk. I don't remember. I had nothing to do with the lumber shipments from the Bonita Mill in 1886.

Q. Do you know whether or not it was sent to Anaconda direct from the mill?

Ans. Well, the lumber that had been cut, to my knowledge at that time, was not shipped out of the state; but mostly all to the Anaconda Mining Company, either to Butte or to Anaconda.

(Witness Continuing:) The lumber was shipped direct to Anaconda, to its destination, and was not first sent to the Missoula yards and from there to Anaconda. I mailed a bill showing the contents of the car to Missoula. I do not know at that time who made out the bills for the lumber that was shipped to the place and to the person who received and purchased the lumber. I am not clear as to whose name the bills were made out in at any time there. I do not know whether they were made out in the name of Mr. Fenwick or not, the bills to the Anaconda Company. I am not clear as to how the stationery was made at that time. As far as I know, Mr. Fenwick may have billed the same directly to the Anaconda Company and sent his invoices over to Missoula, but I don't think that was the form at that time. I



.(Testimony of Sidney C. Mitchell.)

think the bills were sent to Missoula and from there they were invoiced. At Missoula Mr. Winstanley was employed by somebody, [91] but I do not know who employed him. He had a separate office in the Missoula Mercantile Company's establishment. He had a desk in the office of the store. I do not know who paid his salary. I do not know whether he was employed by the Missoula Mercantile Company or by Mr. Fenwick, or by Mr. Fenwick and Mr. Henry Hammond and paid by those persons. I don't remember of anything ever bearing the address of Mr. Winstanley, but I know from my experience that they came into Mr. Winstanley's possession. So far as my experience goes, it is a fact that Mr. Winstanley made up the bills for the lumber to be sent to the purchaser of the lumber, whether it was the Anaconda Company or any other purchaser. I don't know in whose name Mr. Winstanley made out the bills for the lumber that was sent from Mr. Fenwick's mill. So far as I know, he may have made them up in the name of George W. Fenwick. I do not know when the money came back from the sales of lumber whether it came back in the form of cash or in checks, or otherwise. While I was employed there with Mr. Winstanley I did not see any checks for lumber sent from Mr. Fenwick's mill. I did not see any checks for any lumber sent from Mr. Henry Hammond's mill, or the Blackfoot Milling and Manufacturing Company. I know that money came in and credits were made, but I did not have anything to do with receiving the money. I was an assistant

(Testimony of Sidney C. Mitchell.)

to Mr. Winstanley in the keeping of the books. But in keeping these books, I do not remember anything of Mr. Fenwick's business in that office.

The COURT.—Q. You mean entries made in his name?

A. No, sir; at the time I was there the construction of the Bitter Root Valley Railroad was going on and several small mills were working up in the Bitter Root Valley and [92] each mill had its separate set of books and shipments were made from those mills. The contents of the different cars would be mailed and the invoices would be sent out from that office, and as to the payment of those bills, I don't know anything about that. Mr. Winstanley evidently received the amounts that were credited to the account of each mill and each mill had a different set of books.

Mr. WHEELER.—Q. Was the account so kept there of the moneys received for the shipments that were made from the mill that Mr. Fenwick was operating?

A. I don't remember anything about Mr. Fenwick's mill in there. There may have been, but I am not clear on that. I am not clear about that branch of it.

Q. You cannot recollect whether anything was kept in Mr. Fenwick's name, or in the name of the Bonita mill, or any other name? A. No, sir.

(Witness Continuing:) Bonita is about seven miles up stream from Wallace. When I went back to the Bonita Mill in 1890 or 1891, Mr. Graham was

(Testimony of Sidney C. Mitchell.)

in charge. I don't know for whom Mr. Graham was operating the mill at that time, but I understood it was for G. W. Fenwick & Company, or G. W. Fenwick. When I went to work for Mr. Henry Hammond on the Blackfoot Mr. Henry Hammond was operating the Blackfoot Mill. At the time that I was familiar with that property and when Mr. Henry Hammond ceased to operate it, it passed into the hands of the Blackfoot Milling and Manufacturing Company and Mr. Henry Hammond still continued to be the active manager of the property. I never saw Mr. A. B. Hammond on any of the lands that the company was cutting from on the Blackfoot country. I saw Mr. A. B. Hammond once in the Hellgate country when he made a visit to Wallace when I was there. [93]

The COURT.—Were you ever out on the lands they were cutting on at Hellgate?

A. I have been all over the Hellgate, from Bonita to Bear Mouth.

(Witness Continuing:) I scaled a little up there; I had duties that took [94] me out on some of the land; I was taking care of the commissary and made out the bills for the shipments and I did some scaling. While I was scaling near here and was at the mills working in the capacities I have indicated, I never saw Mr. A. B. Hammond. As to this E. F. Rutherford Lumber-yard, where I worked after 1890, Mr. Rutherford owned it; that is he owned it up to a certain time, and I don't know who had charge of it afterwards. I don't think Rutherford

(Testimony of Sidney C. Mitchell.)

owned it at the time I worked there, but the account was carried, I believe, in the name of E. F. Rutherford. I was working in the office there. With reference to the ownership of the yard, I know that Mr. Rutherford did own it at one time. I don't think he made a success of it and it was taken over by, I think, the Big Blackfoot Milling Company. I am not sure about that now. It must have been taken over along in 1890. Concerning lumber that was shipped to that yard from Bonner, that was in 1889 and 1890. None was shipped from Bonita that I know of at any time. I was familiar with those shipments from Bonner and then from this yard at Missoula. The lumber went to the Anaconda Mining Company at Butte and the Anaconda Smelting Company at Anaconda and the Great Northern Railway Company at Great Falls, Livingston, Billings, Phillipsburg, Granite and Helena. Mr. Fenwick purchased his supplies for the conduct of his mill from the Missoula Mercantile Company. Mr. Henry Hammond purchased his supplies from the Missoula Mercantile Company. Blackfoot Milling and Manufacturing Company purchased its supplies from the Missoula Mercantile Company. I am not familiar with an incorporation known as the Big Blackfoot Milling Company, except that I worked for it. It purchased its supplies from [95] the Missoula Mercantile Company. With reference to the purchase of supplies, I had something to do with them. I sent in orders for supplies. When Mr. Fenwick purchased supplies they were put in the



(Testimony of Sidney C. Mitchell.)

storehouse in his store at Bonita. These supplies were sold at a profit. He purchased them wholesale in Missoula and sold them at retail in Bonita. I have no personal knowledge of the profits that he made at that time. Whether they belonged to him and whether he retained them or whether he paid them over to anybody else. I do not know in reference to his account at the Missoula Mercantile Company, whether or not he had a credit there, so that he could give his men time checks payable at the Missoula Mercantile Company. His men were paid with an order on the Missoula Mercantile Company. I think men were occasionally paid at his store in cash. I don't remember of any particular instance, but if a man worked there a half a day he would get a pair of gloves or the money or a pair of socks and some chewing tobacco. In the case of the regular monthly payroll, that was made out and sent down to the Missoula Mercantile Company's store. I do not know what arrangement Mr. Fenwick had for the advancement of money to him. I do not know whether or not he had cash on deposit with the Missoula Mercantile Company's store. Mr. Fenwick also sold from his store hay and grain that he purchased from surrounding farmers and stockmen. Also beef for the commissary and the camp.

Q. The custom at that store was not confined absolutely to loggers; if a prospector came in and wanted to purchase supplies there, he could do so?

Ans. Anybody could purchase there that had the money. [96]

(Testimony of Sidney C. Mitchell.)

(Witness Continuing:) Regarding the method of conducting business at the Bonner Mill, when I first went there there was not very much difference in the way it was done there from that which I have described. Later on the business was conducted altogether in the Bonner office. Collections were made from there and invoices were billed there and the whole business, so far as I remember now, was carried through regularly in the Bonner office. When I was there C. W. Young had charge of the Bonner office, and the name in which the business was transacted at the time C. W. Young had charge was the Big Blackfoot Milling and Manufacturing Company. Mr. Young was an employee of that concern. I think it was in 1890 that the business was transferred from Mr. Winstanley in Missoula to the Bonner Mill office; but I might be a year out of the way on that. All of these places to which the lumber from these mills was shipped were in the State of Montana.

Redirect Examination.

Q. Did you keep any record of the persons to whom the lumber was shipped and the purposes for which the lumber was to be used, either at the Bonner Mill or the Bonita Mill?

Ans. There was, in a general way, if I remember right—there was a record kept of each car and its destination, in the office there, but the billing and collecting was done from the Missoula Mercantile Company's store.

(Witness Continuing:) I do not know whether or

(Testimony of Sidney C. Mitchell.)

not any record was kept showing from what lands the logs that were made into lumber were taken—this answer applies to the Bonita Mill. I think a record was kept at the Bonner Mill, in the regular form. [97]

Mr. WHEELER.—The evidence shows that the Hellgate country was not surveyed until about 1902, ten years after this transaction occurred. The sections were not known at that time.

Mr. HALL.—Was any record kept of the lands from which the logs were cut by reference to natural objects in the Hellgate country?

Ans. Yes; they were cut from different gulches.

The COURT.—Was there a record kept of that cutting?

Ans. No record as I know of.

Q. There was no record kept then of the land upon which the cutting was done?      Ans. No, sir.

(Witness Continuing:) I do not know of any record kept at the Bonita Mill of the character of the lands, as to mineral or non-mineral, from which the timber was cut in the vicinity of Bonita Mill. A part of the lumber from the Bonner Mill was shipped to the Great Northern Railroad Company. The use to which that lumber was eventually used was railroad purposes, ties and switch ties, sets of switch ties. It was shipped to Sheppard, Sims & Company, contractors for the Great Northern Railroad. I understood that that firm had its head office at St. Paul. As far as I know, but of my own personal knowledge I do not know, the timbers that were

(Testimony of Sidney C. Mitchell.)

shipped from the Bonita and Bonner Mills to the mines at Butte, were used in mining I do not know what eventually became of the lumber that was shipped from these two mills to Helena and Billings and those other towns that I have named. I never made any record in either mill of the purposes and uses for which this lumber was to be [98] put to that was shipped out. I don't know that there was any such record kept. As far as I know, there was no person while I was at those mills that kept any such record. I don't know as to whether I was sufficiently familiar with the records kept in these two mills to have known of such a record if it had been kept.

I know of the general method of the keeping of the books in those two mills. The books that were kept at the mills were very simple. Every shipment of lumber was made a record of and that was forwarded to the Missoula office and they collected for it and practically handled it. As far as the mills were concerned, no other records were kept than those that were essential for those purposes. I don't know who was the manager of the Eddy-Hammond Company just prior to the transition of the business of that Company to the Missoula Mercantile Company. The earliest recollection I have of a manager of the Missoula Mercantile Company, when I first knew it in 1885, is Herb. McLeod. I do not know what Mr. A. B. Hammond's position was with the Missoula Mercantile Company when I first knew it.



(Testimony of Sidney C. Mitchell.)

Recross-examination.

I saw quite a bit of Mr. A. B. Hammond while the road was being built to the Bitter Root Valley. He was engaged in the work of constructing that railroad. When I testified as to accounts kept at the Missoula Mercantile Company's store, I meant in the sense that I have already testified to, as to their being kept by Mr. Winstanley. Mr. Winstanley's office consisted of a desk in the office of the Missoula Mercantile Company's store. The entrance to the office was, I [99] believe, from Higgins Avenue, at the back of the store. It was on the first floor. The office was moved upstairs. Mr. Harrison, I believe, was in charge of the office upstairs, Mr. Winstanley having quit and gone into the real estate business. I think that was in 1890, or probably the fall of 1889, or maybe the summer of 1890. There was a real estate boom there and Mr. Winstanley got hold of some land and wanted to go into the real estate business. I read in the papers that Mr. Winstanley is dead.

Thursday, January 16, 1913.

**[Deposition of Felix Cyr, for Plaintiff.]**

The deposition of FELIX CYR, a witness called and sworn on behalf of plaintiff, was offered and read in evidence by the plaintiff, as follows:

Direct Examination.

I am about forty-two years old and reside at Bonita. Farming is my occupation. I own some land in the vicinity of Bonita—situated in section

(Deposition of Felix Cyr.)

11, township 11 north, range 16 west. I have lived in the vicinity of Bonita off and on since the year 1885. I am acquainted with A. B. Hammond. I knew him when he first came there. He was there when we came there in 1885.

Q. What was he doing there at that time?

A. They had a sawmill there.

Q. Did you become acquainted with Mr. A. B. Hammond personally?

A. The way I got acquainted with him, I used to get a check—I worked there sometimes, I met him here, he spoke to me, that is about all.

(Witness Continuing:) I knew of the sawmill that was located on section 14. That is the sawmill that was commonly known in that neighborhood as the Hammond Sawmill. When I first came to that neighborhood they were just starting the sawmill and just starting to run it. During the time that the mill was running on Section 14 I saw [100] Mr. A. B. Hammond in and about the mill.

Q. Did he give any instructions to the men who were employed about that mill?

A. Yes, sir, he did.

Q. Did he ever give you any instructions during your employment about that mill?

A. Yes, he did. One time I was working there that first fall and my dad was working there with a team. My dad was supposed to be driving a team, but I was driving; I was fifteen years old then; A. B. come up, he said to me, where is your dad? I said he is over home. He said, you better go back

(Deposition of Felix Cyr.)

and tell him to drive his own team, you are too small. The work I was doing in and about the mill on section 14 was grading a ditch so that they could put in their flume to let the logs into the pond where the mill was.

Q. Now, how long from the time you first became acquainted with Hammond there in 1885 until he ceased to have charge and control, or give directions in regard to that mill?

Mr. BURNETT.—Objected to on the ground that it is putting something in the witness' mouth that he has not testified to.

Mr. HALL.—I will withdraw that question and change it. Did Mr. Hammond continue for any length of time to supervise and give instructions to men engaged about the work around that mill?

Mr. ROBERTS.—We object to the question for the reason that it is leading and for the further reason that the witness has not testified that Mr. Hammond was giving instructions about the mill or continued to give instructions about the mill.

The COURT.—I will let that be answered. He [101] testified that he saw him there.

To which ruling of the Court defendant duly excepted. Exception No. 1.

A. Well, he never gave me—told me about it because there was a boss there taking charge of the camp at that time. Mr. Hammond used to come there once a month, or off and on.

(Witness Continuing:) The first fall I was there, I can't remember the name of the boss who was in

(Deposition of Felix Cyr.)

immediate charge of the mill; he was a red complected man. The next man there was Fred Hammond, brother of A. B. Hammond. I continued to work in and about that mill about three years.

It was here stipulated for the record that it may show that Fred Hammond is dead.

(Witness Continuing:) As to my understanding that Mr. A. B. Hammond was the head man—I told you the way it is. Suppose we work for a business and they say it is Hammond's Sawmill. When we got pay, we went down to Hammond's office to get pay; I always thought it was Hammond's mill, that is all I know about it.

Q. And for your work in and about the mill, who paid you?

A. He gave us a time check at Bonita, and we went down to the M. & M. Company's or Missoula Mercantile Company's store to get our money.

Q. How were you paid on the time checks?

A. They gave us money; a fellow named Jack Keith was cashier there them days.

(Witness Continuing:) As to the man who had charge of shipping of the [102] lumber from the mill and billed it out from the railroad station; I don't remember, the first fall, in 1885, who was clerk there, but I think in 1886 Mitchell was there. I never did any of the shipping myself. I was acquainted, after 1885, with land from which timber was cut that was sawed on the mill on section 14. I have examined the lands in that vicinity recently and had the section corners and the lines pointed



(Deposition of Felix Cyr.)

out and indicated to me. I was familiar with section 10, in township 11 north, range 16 west. In them days the land was not surveyed there, you know, but afterwards, since I could see where the cutting was done, it was on that section 10. I recognize what they now call section 10 as the portion from which certain timber was cut. I think it was in the fall of 1885 and '86 that timber was cut from section 10. I couldn't swear which it is now.

Q. Do you remember who cut that?

A. Well, I couldn't say for sure, in the fall of '85, but that boss was there before the first boss. He was there during the winter, if he left there during the winter—I don't know if he was the one that started on the cutting or not.

(Witness Continuing:) The timber that was cut off of section 10 in the winter of '85 or '86 was hauled to the mill on section 14. In the spring of '86 me and dad we skid some logs on the other side of section 10 right back of Bonita next section from section 10. I didn't haul any timber from section 10. The timber that was cut went to the sawmill and was sawed. The timber that was cut in section 2 was cut in the winter of 1886 and it went to the same mill on section 14. I was working at the mill at the time the timber was cut from section 14 [103] immediately surrounding the mill. I started to work in the first fall of '85. They took some logs around the mill there. The timber that was cut off of that section was put in the yards and shipped. As to the person who was handling the cutting and sawing of

(Deposition of Felix Cyr.)

the timber there at the mill, I told you from the first fall of 1885, I forget the man's name, but next spring Fred Hammond come there. He took charge of it.

Q. But what I am trying to get at is not by specific names, but the parties who were running the mill there. Did they supervise and attend to the cutting of the timber off of section 14 and the sawing of it at the same mill?

A. Well, they had a wooden foreman, a man named Ross.

(Witness Continuing:) I don't know whether Mr. Ross was connected with the mill. All I know, he was taking charge of the wood crew, that is across the river in 14. The wood which was cut under Mr. Ross' supervision was taken to this same mill and sawed. I never worked for a man named Jack Welsh, but I worked with him. That was when I was working at the mill.

Q. And how were you paid when you were working with Jack Welsh.

A. There was no pay day; they sent down sometimes every month; when you wanted some money you had to get it, unless you sent for it.

(Witness Continuing:) I had to go to the Missoula Mercantile Company and I was paid there in cash. George Rich logged up in what is called Rich's Gulch on section 6, township 11 north, range 15 [104] west, and these logs were put in the river and driven down to the Hammond Mill. Rich was logging there when I come there that fall in '85 and '86; fall of '86; he was there two years; he was there two

(Deposition of Felix Cyr.)

winters; I know the fall of '85 and '86; when I was working with Jack Welsh I worked different places. One time I was working at the mill and he was working for the Company. After the times I have spoken of I worked in the timber cutting and logging, but not in that vicinity.

Q. Do you know of any place around there where Jack Welsh took any timber and took it to the Hammond Mill?      A. Yes, sir.

Q. Off of what section was that?

A. Well, I don't know if he—that was on section 1. I meant by that, that I couldn't say exactly whether it was all on 1 or some on 2.

(Witness Continuing:) Welsh did not cut any out of Cramer Gulch. The summer of '87 I was employed by the people running the Hammond Mill as a horse herder. I am familiar with the place called Tyler's Gulch and was working in the vicinity of that gulch in the summer of 1887. I did not see anyone cutting timber in that vicinity, but they were hauling logs out of that vicinity that summer. Bill Graham was doing that hauling. The logs were being taken from Tyler's Gulch. They were being taken to the river, to be drove down there to the Hammond Mill. I don't think I could tell you now what sections those logs that came out of Tyler's Gulch come off of. I am not familiar with the sections over there. I knew they were logging off section 20 over in township 11 north, range 15 west, that lies west of Nimrods, some two or three miles. My [105] father was working there at the time;

(Deposition of Felix Cyr.)

that is how I come to know. He was night herding. I couldn't say that I saw them logging at that particular tract. I saw them logging there at the camp. I should judge that the Hammond Mill run about seven or eight years on section 14. I worked three years myself around in there. There was no other concern or person in there on section 14 which was logging and sawing timber in the vicinity of the sections I have mentioned from 1885 until the time they quit running the Hammond Mill. There was another outfit up the Cramer Gulch during that time. That was the Thompson outfit and they were on section 35 up at the head of Cramer Gulch where it forks and one goes to the right and one goes to the left. I should think the Thompson Mill was in operation up there in the year '85 or '86. I couldn't say which—at the time of the trouble which company it was. There was trouble between the Hammond outfit and the Thompson outfit. The Thompson outfit did not log any south of where their mill was situated. The Thompson Mill people logged to the north of their mill. None from the south of their mill.

It was here stipulated between the parties hereto that the so-called Thompson Mill was an independent mill, situated at the head of Cramer Gulch, and operated by independent parties, with whom the defendant had no connection.

(Witness Continuing:) I know of a mountain over in that vicinity that is called Medecine Tree Hill. Timber was logged off the land in the vicinity of



(Deposition of Felix Cyr.)

Medecine Tree Hill. It was put in the river and driven down to the Hammond Mill. I think that was in 1887. Bill Graham had charge of the cutting and logging. I know Hutchin's Gulch in the vicinity of section 14 or on [106] section 14. I know Welsh's Gulch. It is part on section 14—it lies at the mouth of them two gulches. There was timber cut out of these two gulches and shipped or logged to the Hammond Mill. Logging was done in Welsh's Gulch in the fall of 1885, and at the mouth of Hutchin's Gulch, that was logged in 1885 at the foot of the hill, you know. I couldn't say the amount of timber that was on section 14 there in the neighborhood of Welsh's and Hutchin's Gulch, but the timber was something alike all around the rest of the land there—the timber is all alike. In that neighborhood it is pine and fir and not very much tamarack. I was not acquainted with its comparative value as saw logs and saw timber. I was working for wages. I did not know the price of lumber. I know where Beaver Tail Hill is. It lies right across the river from the sawmill. The line runs right in the creek; that is the corner of section 10 and section 11. Some timber was cut off Beaver Tail Hill and hauled to the Hammond Mill. That was done in the summer of '86 or '87. At that time Fenwick was running the mill. I think there was only a few men worked there. There was no crew working there steady; they simply worked out there individually from the mill. I don't know what section Medecine Tree Hill is on. In those days it

(Deposition of Felix Cyr.)

was not surveyed, you know.

Cross-examination.

The part of Rich's Gulch that was cut was at the mouth of the gulch, on up the gulch like. The gulch was cut on the sides, not very far, on both sides. I should say, I couldn't just exactly say, but it was between a quarter and half a mile, I should judge, that they cut up the gulch. I know that after the operations of the mill which has been [107] designated the Hammond Mill, there have been two mills operating in Rich's Gulch. As to whether there might have been a mill operating there before 1885, I couldn't say. I don't know. I was not up there, you know, up the gulch. When they were cutting the timber for the Hammond Mill, I went by the road, I went by the mouth of the gulch, by the county road, I did not go up the gulch. I could not tell you how often I went by on the county road. The way I know that the timber that was cut up there at that time went to the Hammond Mill, was that my father was logging for them, he was logging for the Hammond Mill, that is what I understood. Rich told me my father was logging for the Hammond Mill. That is all I know about it. I was fifteen years old in 1885. The lower part of Hutchin's Gulch was cut on both sides, I could not say how far up the gulch it was cut. I don't know how far. They cut at different times in that gulch. They must have went up a mile and a half, anyway. When I say them, I mean that I worked for Graham.

(Deposition of Felix Cyr.)

Harper and Baird had a mill at that place, but that was after I worked there. McKean had a mill up in Rich's Gulch, and there was another where Morley was cutting—at a place called Little Lake, up in there. I forget what section that is on. I think the Morley Mill was running five or six years ago last fall. I couldn't say for sure. I do not know about McQuarrie being connected with McKean's Mill. McKean was there himself. I couldn't say just exactly when that mill was operated. I didn't work there. I am pretty sure that there was no logging done on Cramer Gulch before the people down at what they call Hammond Mill was operating up there. I do not feel sure that there might not have been small cuttings there for ties and such [108] purposes in the construction of the railroad. I couldn't say as to that. There might have been, and I wouldn't know it; no matter whether I went over the land or did not go over it.

#### Redirect Examination.

They don't usually cut big saw timbers for ties. During the entire time that the Hammond Mill was operating on section 14, there was no other mill around there in the vicinity of Bonita, excepting the Thompson Mill, on section 35. That is the only mill that was up there. The Baird Mill, and the McKean Mill and the Morley Mill all came in there after the Hammond Mill was shut down. The Baird people built their mill very close to where the old Hammond Mill stood. When I first became acquainted with

(Deposition of Felix Cyr.)

section 14, there was no indication of cutting of saw timber off of it, excepting right down at the mill where the mill was sitting, they cut some down when they were building the mill. I should judge my home was about a quarter of a mile from this mill on section 14. I lived very close to the mill. I said in my cross-examination that I knew of Mr. Graham cutting up in Hutchin's Gulch. The logs that were cut and logged there by Mr. Graham were hauled down to the Hammond Mill. There had not been any cutting of saw timber along in the flat up and down from section 14 before the Hammond Mill came in there and commenced cutting, that I know of. I was not familiar with that country about section 14 before the Hammond Mill came in.

Recross-examination.

As to the logs that were taken out of Hutchin's Gulch to the so-called Hammond Mill, I drove a team and hauled logs for the logging company. I took some of the logs. I did not stay there during the entire time that they were taking the logs [109] from Hutchin's Gulch to Hammond Mill. I worked there about a month or six weeks. All I know about it is just what I said, that for a month or six weeks I hauled logs from Hutchin's Gulch to Hammond Mill. I guess the rest went there. I do not know that they did. I do not know that there was a mill operating on section 12 before the so-called Hammond Mill was run. I was on some of section 12. On section 12 there was a man living on a ranch there named Gregg. I know Will's House on that



(Deposition of Felix Cyr.)

section. I never knew of seeing the remains of an old mill just west of Will's house known as the old Heacock Mill. I didn't go all over that section. I only went over part of it, you know. I don't know that they take very large trees for bridge timber. I never seen any done, though I testified that they cut ties from small trees. There must have been a great many bridge timbers used in the construction of the Northern Pacific Railroad. I knew that they used a good many bridge timbers through this Hell-gate country.

Redirect Examination.

I was not in there when the Northern Pacific was put through, and I don't know anything about whether they took their timber for construction purposes there.

**[Deposition of William A. Cook, for Plaintiff.]**

The deposition of WILLIAM A. COOK, a witness called and sworn on behalf of the plaintiff, was offered and read in evidence by the plaintiff, as follows:

Direct Examination.

I reside at Bonita. I am fifty years old. I am a farmer at the present time by occupation. I have resided in Bonita since 1885. I was section foreman for the Northern Pacific Railroad when I first took up my residence in the vicinity of Bonita. My residence is now on section 10, township 11 north, range 16 west, at the mouth of Cramer Gulch. I have lived on that section since about June last,

(Deposition of William A. Cook.)

but I have owned it about eleven (11) [110] years. I am familiar with the section lines about my house and farm. My house is located on the northeast quarter of said section and it is pretty close to the center line of the section—a little north of the center. I know where the north line of section 2 is. According to the plat of public surveys, section 35 in the township north joins on to the north side of section 2 of my township. I know where the old Thompson Mill stand is up there. I believe that is on section 35. I am not sure—34 probably. The mountains extend on to the north of section 35. The ground around, taken from the north line of section 1 up section 35, is rough and hilly, and it is all down grade all of the way down on section 35 to the old Thompson Mill site. From the Thompson Mill site, on past my house, it continues down grade. The mountains on either side of Cramer Gulch are rough and precipitous. As section foreman of the Northern Pacific Railroad at Bonita, Montana, I built the siding into Hammond Mill in 1886. I believe it was 1886. I am not certain about it. I was there about a year before that siding was put in. The mill was not in existence when the siding was put in. It was put in in order to ship the mill in the cars. The siding was put in before the mill. I got my orders from the roadmaster of the Northern Pacific Railroad to build that siding and received compensation for building it. I received it from Mr. Eddy, Mr. Hammond's partner. I was paid in cash at Bonita; in fact, we was paid about a mile and

(Deposition of William A. Cook.)

a half west of Bonita. I met him. He was riding a velocipede and I was coming on a hand car and he stopped me there and paid us on the road. I received a letter from the roadmaster through the railroad mail, instructing me to construct that siding. The letter has been destroyed or lost. Afterwards, I had verbal orders from the roadmaster. In fact, he was there several times when I was constructing it. I [111] came to go to Mr. Eddy for my compensation for that work because the roadmaster informed me that we were to keep the time separate—that the sawmill company would pay myself and men. I went to Mr. Eddy personally because I used to see Mr. Eddy every day he was there; he had charge of the mill and he used to be around on the works every day and he mentioned that he would pay us. Mr. Eddy was acting for the concern of Eddy-Hammond & Company and Mr. Eddy was of that firm and the Hammond of that firm was A. B. Hammond. Mr. Hammond was there several times about the work when I was constructing the siding. I don't know, I am sure, what he was doing there, I suppose he was kind of looking after it. I don't remember that I heard him give any directions. Eddy was there in and about the work of the construction of the mill pretty nearly all the time, but Hammond was there a couple of times, two or three times, if I remember right.

Cross-examination.

I don't know just exactly how long it took to construct this siding, but I think, if I am not mistaken,

(Deposition of William A. Cook.)

we worked nine days. It was a spur running in from the main line of the railroad to the mill. There were two spurs, the main spur was about fifteen hundred feet and then there was a spur running to the right of this, a short spur, probably three hundred or three hundred and fifty feet. Mr. Eddy was there nearly all the time; they were operating at Clinton; he used to ride between Clinton and Bonita on his velocipede. I used to see him nearly every day. I remember he was shooting chipmunks most of the time. Quite a sport, Mr. Eddy was. I cannot be certain whether it was '85 or '86 that spur was constructed. It was the latter part of the summer, but I am uncertain [112] whether it was the latter part of '85 or the latter part of '86. I expect I could have looked it up. I have papers where I could get the exact year.

Q. Now, did Mr. Eddy tell you for whom he was acting, or did you just assume whom he was acting for?

A. The roadmaster told me who I was acting for, about keeping the time separate, and Mr. Eddy was giving the orders there.

(Witness Continuing:) The roadmaster told me it was to be paid by the sawmill company.

#### Redirect Examination.

After the spur and siding were constructed they were used to haul lumber and the first thing they done was to ship the mill on the car, and this is the mill that was commonly known as the Hammond



(Deposition of William A. Cook.)

Mill. This mill was located on section 14. I had a verbal contract to do logging on section 10 in that township. It was made in 1887 with Mr. Graham, the foreman. Under that contract I was to get the logs down on the flat, and they hauled them with trucks to the mill afterwards. They were hauled to the Hammond Mill on section 14. I cut 28,000 off of section 10. That is all logging measure. There was a dispute about the pay. I was to get \$4.00 and got paid off at \$3.00. West Fowler handed me a check for payment for that contract. He was secretary or bookkeeper, and was located at the mill. We had a dispute about the payment. I was to have \$4.00 a thousand and Mr. Graham thought I got them down so cheap, he offered me \$3.00. I remember the check was \$84.00 for the 28,000. I had this dispute mostly with the bookkeeper, Mr. Fowler, rather than with Graham, and Fowler [113] said he had orders to pay only \$3.00. I went to Graham afterwards. Fowler was in charge of the books and billing for the Hammond Company.

Q. Do you know the exact title of the firm or corporation?

A. Well, it was going under the name of Eddy-Hammond & Company at that time.

(Witness Continuing:) I know who the partners were. I skidded logs under Mr. Graham on section 2 in Cramer Gulch near the Thompson Mill. These logs went to the Hammond Mill. We hauled on sleighs. Thompson was not operating there at that time; he came in afterwards—the following fall.

(Deposition of William A. Cook.)

With respect to the place where Thompson's Mill was finally established, we took the logs from all around there up the gulch; the most of them; where I was working it was up the left-hand gulch, to the right up the hill. Then we took in opposite Mr. Cyr Parent's ranch. That ranch is in section 2. Thompson did not cut any logs south of his millsite that I know of. I know the Hammond Company did cut some on section 2 south of the Thompson millsite. Mr. Thompson might have cut there, but I don't know. In order for Thompson to have cut there, he would have had to drag his logs back up hill. This timber and country to the north of Thompson Mill on section 35 was all sloping down toward the mill. I was paid by the Company for the skidding in Cramer Gulch on section 2. I received a check from Mr. Fenwick and from the Company; I received a check from Mr. Fenwick; he was the manager at that time, and Graham was the foreman; I believe the check was signed by Eddy-Hammond & Company, I am not certain. [114] I wouldn't swear to that. Eddy-Hammond & Company, by George W. Fenwick, I think.

#### Recross-examination.

It was in the winter of '87 in December, January and February, I worked in Cramer Gulch with my team cutting logs; but I wouldn't swear positively. I know I worked there between '86 and '88. I believe it was '87 and '88—the winter of '87 and '88. I believe it was the winter of '87 and January of '88.

(Deposition of William A. Cook.)

Q. And do you want to be understood as testifying that at that time you got paid by a check signed Eddy-Hammond & Company? A. I believe so.

Q. You think so, you are not sure?

A. No, sir; no, sir; it is a long while ago.

(Witness Continuing:) I made this contract for the cutting off this section 2 with Mr. William Graham. He was foreman. He was wood foreman working in the mill which I called the Hammond Mill; he looked after the logs; he didn't have anything to do around the yards, around the mill, this was scattering timber that had been cut before, picking up scattering timber. I was working by the month; I had my own team; I was getting \$80.00 and expenses. I worked on section 2 the winter of '87 and spring of '88. It was the following spring, or the same spring that I worked on section 10 in the winter, then in the spring, in May or in June, I done this logging. I got 28,000 off section 10. As to how much I got off section 2, I don't know; I was not logging by contract; I was working by the month. I was skidding and running sleigh part of the [115] time; doing everything. As to whether section 2 had ever been cut off of before Hammond went there, I don't think I had been on the ground; I never saw any cut. As to section 10, there had been cutting done there before. This Company had cut it, Hammond & Company had cut it. I was cutting the scattering timber that they left. They were logging on 10 and 4 As to whether or not when I worked on section 2 I found that ties and piling had been cut

(Deposition of William A. Cook.)

on Cramer Gulch, I did not know of any ties, that might have been before I came in, after the railroad was in, they might have cut it before the railroad was in. I ought to have noticed any stumps had there been any; I don't remember. I noticed stumps south of Bonita, some that had been cut there across the river. That was on section 9, in Granite County, across the river, also in sections 7 and 8. I don't know whether most of this timber that was cut and brought down to Cramer Gulch was taken off section 35. I think they took it off a good many sections; they were logging there for quite a few years; there was a good deal taken off section 2. They took it on both sides of the gulch. The land on the east side of the gulch in section 2 is rough and hilly. There was considerable timber on that side. I know that Kendall Bros. operated logging camps and saw-mill in the years 1897 and 1898 down there. I was there at the time they operated. They might have cut some on section 2, but they were farther up the gulch most of the time Hadley Morrison might have cut some on section 2; he was subcontracting under Kendall Bros.; I don't know that they cut any themselves, although I believe they cut some. The slope is not very great in the gulch between north of section 2 and section 35, but on the hill it is [116] pretty steep. I am not prepared to state that there was no timber at all taken from the northerly half of section 2 to the mill operated on 35 by Thompson. I don't know. As to the timber on section 10, that 28,000 feet that was cut there it was all pine, with



(Deposition of William A. Cook.)

the exception of two or three firs. It was not very good quality. It was timber that the Company left behind them, the Hammond Company. I saw them logging there at an earlier date, that was about a year before I got there, a year or two or year and a half, they were logging with cattle, hauling out with bulls. Under this contract under which I cut this 28,000 feet, I was to cut them off the three forties on the north side of section 10. I did not do any cutting elsewhere on that section; I cut them all on the two forties, northwest, and I didn't cut any on the westerly forty in the northeast quarter of section 10. That laid over in Cramer Gulch. As to the southeast quarter of the section, I own that, all that up there now; it is agricultural land, that is, pasture land, mostly. The timber was taken off that south slope. I think that timber was cut by the Hammond Company, I wouldn't be certain about it. After they moved the mill in. I have never pulled stumps out of that land. I have testified several times about the Hammond Company operating a mill. I am satisfied in my own mind that I know just exactly what was the concern or outfit which operated it.

Q. Just state what your own knowledge is; we don't want any hearsay.

A. No, hearsay; I was on the ground when they moved in.

Q. When who moved in? [117]

A. Eddy and Hammond.

Q. They didn't have a sign of Eddy and Hammond on, did they?

(Deposition of William A. Cook.)

A. No, sir; they did not.

Q. How do you know it was the Eddy-Hammond Company?

A. I am satisfied in my own mind; it was known as the Eddy-Hammond Company.

Q. It was known by you?

A. Yes, and by everybody else.

Q. What do you know about it?

A. I know I received a check from them signed by Eddy-Hammond & Company, by George W. Fenwick.

Q. Are you sure of that?

A. Not absolutely sure; I testified that I was not.

Q. What else do you base that inference on, that Eddy-Hammond & Company (interrupted)—

A. It was known all the time as the Eddy-Hammond Company around there, Mitchell managing it.

Q. What do you know of your own knowledge, you say it was known, who knew it? Did you know it? A. Yes, I am satisfied of it.

Q. Tell me what you knew, I want the facts. I don't care about your conclusion. What did you know?

A. Just in a general way, the same as everybody else.

Q. You told us you thought you got a check signed by Eddy-Hammond & Company, by George W. Fenwick. What other circumstances led you to the conclusion that the [118] Eddy-Hammond Company owned or operated that mill?

A. Well, they were managing it, and they were

(Deposition of William A. Cook.)

there and received orders from Mr. Eddy.

Q. We don't care about their managing it. What was done by the Eddy-Hammond Company to make you think that they were managing it?

A. I was there at one time when Mr. Hammond had a fuss with a contractor, George Ritz; he was a contractor logging; they almost came to blows in Bonita.

(Witness Continuing:) That was before they put the mill there, this man Ritz logged about a year before the mill moved there, and banked them on the river above the Will's place; that would be about 1884. I don't recall any other circumstance which to my mind made me feel that Eddy-Hammond & Company were operating that mill.

Q. Well, then, to summarize: there is the instance of the check and there is the talk which Mr. A. B. Hammond had over a logging contract with Mr. Ritz.

A. Ritz was logging for a man by the name of Kiser at that time, he was taking timber that A. B. Hammond claimed.

(Witness Continuing:) These are the only two circumstances that I can now recall that led me to the conclusion that Eddy-Hammond & Company were operating that mill.

#### Redirect Examination.

The fact that Mr. Eddy paid me for the construction of the side track did not particularly have anything to do with this conclusion I formed. I knew in my own mind it was the Eddy-Hammond Company; they had been operating down there at Clin-

(Deposition of William A. Cook.)

ton and other places under the firm name of Eddy-Hammond [119] & Company.

Q. Then you were already so satisfied that this made no great impression upon you? A. No, sir.

(Witness Continuing:) The fuss between A. B. Hammond and Ritz was that Ritz, it seems, had taken a contract from Mr. Hammond to cut logs, and he afterwards sold the logs to A. C. Kise & Company, and was going to drive them down some place down Rock Creek, and Hammond wanted the logs and he afterwards got them. Kise didn't use them at all. Hammond got them from Ritz, afterwards; Ritz went and logged for Hammond for two or three years after that. These logs were got out of Will's Gulch, that is the old name for Rich's Gulch. I used to run by there every day. I used to see them running by. I don't know what section they were cut off. At that time they used fir and tamarack timber for ties and bridge piling. There was fir and tamarack growing in section 2. There were some growing on the flat and some on the hill. They used smaller timbers for ties than they did for saw timber. Kendall came in there with a mill in '97 or '98. That was after Hammond & Company cut the timber off of section 2.

Recross-examination.

I know that for bridge construction and culverts they used 9x16 for the stringer.

Q. You know that all along that Hellgate River it was the practice to cut, and hew out, if need be, these large timbers for that purpose.



(Deposition of William A. Cook.)

A. Them days they cut timber wherever they come to, they didn't pay any attention. [120]

Q. For railroad purposes?

A. Yes, I suppose so. They cut it any old place. I cut some myself. They paid no attention to the lines.

Redirect Examination.

I never did see any evidences of tie chopping or timber hewing in Cramer Gulch. I remember seeing it in sections 6, 7, and 8; that is across the river in Granite County.

**[Deposition of Charles W. Helmick, for Plaintiff.]**

The deposition of CHARLES W. HELMICK, a witness called and sworn on behalf of the plaintiff, was offered and read in evidence by the plaintiff, as follows:

Direct Examination.

I reside in Helena, Montana, where I have lived since 1885. By occupation I am a civil engineer and a graduate of civil engineering from the State University of Iowa. I have followed my profession since 1887. I was living in the State of Montana in 1888 and was employed by one M. J. Haley, who was a Special Agent of the General Land Office of the United States, to make an examination of certain lands. I have notes made by me at the time of this examination. The notes were made on the ground. Referring to these notes, I now testify that I made an examination of the southeast quarter of section 28, in township 14 north, range 14 west. I was em-

(Deposition of Charles W. Helmick.)

ployed by Mr. Haley on some timber cutting cases, to look for corners that he as Special Agent had in charge. My work was to look up the corners of the sections and to count logs and stumps and such things as that, as I could find them. I ran out the east line of section 28. I found the northeast corner and the southeast corner, but the quarter section corner was gone; but I could tell by a mound in place there approximately the line of the southeast quarter of section 28. [121] As to the work I did towards examining the amount of timber that had been cut on this quarter, we went over the southeast quarter of section 28 and counted the stumps, Mr. Haley and myself together. On that quarter we found 1635. We did not make a stump and top scale, but just merely counted the stumps. Mrs. Henry Edgar was occupying the tract of land at that time. She was living in a log cabin on that place. It was October, 1888, that I visited the land. I did not see Mr. Edgar there. My notes show that the improvements of H. F. Edgar consisted of a double log house and some log outbuildings, of the probable value of \$150.00; no ground that I saw had been planted and broken. My memory is that we went over the entire quarter. My notes state explicitly that none of the ground from which the timber had been cut had been plowed and cultivated. I found none that had been plowed and cultivated at that date.

Q. Could you tell from the condition of the stumps and the tops of the trees on the ground about how long the timber had been cut?

(Deposition of Charles W. Helmick.)

A. No, sir; I don't remember as to that, but the tops and stumps, my memory is the tops and stumps had not rotted at that time, so that it could not have been very much prior to that time, more than a few months, anyhow, probably a year or two. I would not think it was any more than a year or two.

(Witness Continuing:) On the northeast quarter of section 28 I found quite a number of logs already cut, I counted those logs. I don't remember a logging camp on said section. My recollection is that the Edgar claim must have been a pretty well timbered claim because there were lots of stumps and they were large stumps mostly. As to whether the cutting had been done in [122] such a manner as to indicate it had been done for the purpose of cultivating and the improvement of the land, or for the purpose merely of cutting and removing the timber, inasmuch as there was no ground cultivated whatsoever, my impression is that that land was cut off simply for the timber that was on it. I drew that conclusion simply from the fact that there was not any cultivation and the logs had all been taken off, removed. In reference to this tract of land and the timber that evidently had been on it and comparing it with the land surrounding it as to timber value, judging from the size of the stumps and the tops lying around in there, I should say that the southeast quarter of section 28 had been at one time more heavily timbered than the northeast quarter, where the logs were banked. I have testified that I found the logs banked on the northeast quarter and that

(Deposition of Charles W. Helmick.)

there were skids there. Mr. Haley and I and Mr. George Ogden counted them. From this I may say I had some knowledge of the surrounding lands.

**[Deposition of George H. Reeder, for Plaintiff.]**

The deposition of GEORGE H. REEDER, a witness called and sworn on behalf of the plaintiff, was offered and read in evidence by the plaintiff, as follows:

Direct Examination.

I am fifty-four years old. I live about ten miles northwest of Craig, Lewis and Clark County, Montana. I am at present engaged in the livestock business, but was formerly a civil engineer by profession. I came to the State of Montana in October, 1883, and for some time after my arrival I followed my profession or matters allied with it. I came here in 1883 as chief draftsman in the Surveyor General's Office and I filled that position, I think, for about probably six months or eight months, and then became chief clerk, and [123] about the beginning of 1886, my memory is not real good, I think I resigned from the office and started an office of my own in town here. In August, 1886, I was employed by M. J. Haley, a Special Agent of the General Land Office, to retrace the lines of section 28, in township 14 north, range 14 west; and I examined the southwest quarter of said section. My duty in so doing was to investigate the amount of timber trespass, illegal cutting of timber. I cannot say that I remember the day I visited said southeast quarter; I put it down



(Deposition of George H. Reeder.)

in my note-book, which I have here. (Witness produces note-book.) These notes set down in this book were made at the time while I was making the examination on the land. Examining the book, I can state that I made my examination of the land August 13, 1888; that Mr. M. J. Haley accompanied me. He was in charge of that investigation. The witness here referring to his notes and refreshing his memory therefrom, testified as follows:

August 13 I met Mr. Burbeck in the morning crossing Elk Creek, and reached Eddy and Hammond Camp, on Big Fish Creek about noon; took dinner in the camp and in the afternoon examined, in company with Mr. Haley, the pre-emption claims of Mr. Edgar and Mr. Willett. Mr. Edgar's claim is on the southeast quarter of section 28, township 14 north, range 14 west. He has cut from his claim about 25 acres, near the southwest corner of his claim. I found about twenty-five acres of land on the Edgar that had been cut over, and passed through this tract of twenty-five acres. I did not attempt to count the stumps or measure them.

Q. Was the timber that was cut off there cut off completely?

A. All the merchantable timber was cut. [124]

(Witness Continuing:) There was some standing timber left on this particular tract that had been cut over, but it was of no value for logs, no value for lumber. The timber that had been cut was saw timber. I went over sufficient of the quarter section that I could make an estimate of the cutting, that is,

(Deposition of George H. Reeder.)

I have some idea of the amount of cutting that had been done. I saw no indications of cultivation on the Edgar claim. As to improvements I found on the Edgar claim, a double log house, each about 16x30 and two other log buildings. I should judge the value of these improvements would be worth about \$250.00. On my visit to this land I saw a logging camp, my impression is to the east of the Edgar claim. I don't know what section it was on. That camp was locally known as the George Hammond Camp, and it was the camp on Fish Creek. The cutting on the Edgar claim from the Hammond Camp on Fish Creek was just a short distance. It might have been a half mile or mile—something of that kind, and such cutting was just a short distance from the Big Blackfoot River. I cannot say how far. I am familiar with the manner in which logs were brought down or rafted down from the country in the vicinity of the Edgar claim to the mill at Bonner. They banked them on the edge of the river, at a period of high water they would turn them loose and float them down and catch them with a boom. I knew of a mill at that time that was commonly called the Hammond Mill at Bonner. I did not count the stumps on this twenty-five acres on the southwest corner of the Edgar claim.

Q. And had the tops of the trees been removed or were they left lying on the ground? [125]

A. I think some of them had been burned and some of them were still lying there; there was a timber fire in progress while we were there.

(Deposition of George H. Reeder.)

(Witness Continuing:) There were no clearly defined logging roads leading from this timber cutting on the Edgar claim down to the Blackfoot River; the fire had evidently struck through there and removed traces of almost any operations, you know, except the stumps themselves and tops. This fire was along the Blackfoot River in between Hammond Camp and the river; I should say it took in a part of the northern part of section 28. The trees had not been cut there a great while prior to my visit. I didn't make any special examination of that.

**[Deposition of Milton Hammond, for Plaintiff.]**

The deposition of MILTON HAMMOND, a witness called and sworn on behalf of the plaintiff, was offered and read in evidence by the plaintiff as follows:

Direct Examination.

I am sixty-five years old, and was born in New Brunswick. I am a naturalized citizen of the United States. I was naturalized in Missoula some years ago. I don't remember the date. I have resided in the State of Montana twenty-five years this September coming. At the present time my occupation might be stated to be that of a farmer—I am not doing much of anything. I have never individually engaged in the lumber business in the State of Montana, but I worked in the lumber business at Bonner Mill, on the Blackfoot River. A. B. Hammond first got acquainted with me in the fall, I think, of 1887. He is a very distant relative of mine. I worked for the Blackfoot Milling and Manufacturing Company.

(Deposition of Milton Hammond.)

I understood at the time A. B. Hammond was a stockholder, but to say that he was, I couldn't [126] say. The first company that I worked for went under the name of W. H. Hammond, and that was when I went up in the Blackfoot, I think in September, 1887.

Q. By whom were you employed there?

A. Why A. B. Hammond sent me up from Missoula. The way the thing was, he gave me a letter to George Hammond. George Hammond was up there, supposed to be the walking boss, or something of that sort; I had a letter to him and went to work as a scaler. There was nothing said when I was to be employed there, as to who would pay me or from whom I would receive my compensation. As to what Mr. Hammond said when he came to employ me, I was with him around Missoula about a day, I think. He showed me around there quite a little, and he asked me what my business was, or what I was best fitted for, something to that effect. I told him timber business, so he said, go up to George, and he gave me a letter to George Hammond.

Q. This was A. B. Hammond who gave you the letter and he employed you?

A. This was A. B. Hammond.

Mr. BURNETT.—The witness has not said he employed him.

Q. Did A. B. Hammond employ you?

A. He gave me a letter.

(Witness Continuing:) He gave me a letter of introduction, and said I was a scaler, and so on; that



(Deposition of Milton Hammond.)

was in the year 1887. I worked in the Blackfoot seven years. During those seven years, I don't know anything about who the stockholders were of the corporation or copartnership that conducted the [127] business about which I was working. As to the name of the corporation, the first that I worked for, was W. H. Hammond, and then I think the next was the Blackfoot Milling and Manufacturing Company, and I think it became the Blackfoot Milling Company. As to the time that I was working for W. H. Hammond, I got my pay the first year that I was working, I came off the Blackfoot in the spring, and W. H. Hammond set the wages and they paid me and gave me a check on what is now the Missoula Mercantile Company. I got my pay there. I don't remember at the time what was the name of this institution now called the Missoula Mercantile Company. I think it was Eddy-Hammond & Company at that time. While I was working up along the Blackfoot River, I scaled in the woods. Mr. George Hammond was the walking boss, and my instructions, were to report to him. W. H. Hammond instructed me to report to George Hammond. The timber that I scaled up there I did at the direction of George Hammond. He was located at Fish Creek Camp, that was Headquarters Camp. As to how I would know what particular section or quarter-section of land I scaled, you might as well ask me how I know I am in Helena. I followed the skidders. I scaled part of section 28, in township 14 north, range 16 west. Quite awhile after that, I scaled the timber on section

(Deposition of Milton Hammond.)

18, in township 13 north, range 14 west. That timber was cut two or three years after I first came to the Blackfoot. I couldn't say just what year that would be for certain, but it must have been in the '90's, somewhere, from recollection. That was after I left the camp at Fish Creek and went to Bonner. When I left that Fish Creek Camp, I went to Bonner and worked at Bonner that summer, and up the river in the winter time. If I scaled there on section 18, in 13-14, I scaled very little. I was not the regular scaler at the camp. I think George [128] Hammond cut and hauled the logs off that section 18. I don't know positively who cut the timber off of section 18. It might have been Jack Dunnigan—I don't know. My recollection is, as nearly as I could say, I think that George Hammond cut it; I am not certain. The logs that were taken off of that section must have gone to the mill and been sawed at Bonner. All logs cut along there went to Bonner. There was no other place to go. Referring to section 28, in township 14 north, range 14 west, that was the quarter section known as the Edgar quarter. I was present when part of that quarter section was logged. I scaled that section. The logs that were cut off the Edgar claim—off that southeast quarter of 28, were put into the Blackfoot River and taken to Bonner. I think that was 1887. I am not right certain, but I think that was the first year I was up there. W. H. Hammond was running the mill at Bonner at that time. I don't remember what amount of timber was cut off the southeast quarter of section 28. I scaled

(Deposition of Milton Hammond.)

it—John Hammond and I scaled it together. I have no recollection at all of the amount that was cut there. As to the comparative value of that quarter section of land as compared with surrounding timber land, I would say it was a nice claim. I scaled the timber on the northwest quarter of section 34. That was the same year. Jack Cunningham cut off the logs and they were sent to the Bonner Mill. I think I scaled timber that was taken off section 20, in township 14 north, range 14 west. I don't remember what year that was cut in. My recollection is it was Gilbert who cut off that section. The logs taken from that section all went into the Blackfoot River and to the Bonner Mill. I don't remember what year it was that [129] cutting was done off of the south half of section 20, in township 14-15, but it must have been along in the '90's somewhere—'92 or '93, I don't remember. I don't remember anything as to the amount of timber that was cut or scaled off that particular tract. I know the Sontag Ranch. I know there was timber cut on the Sontag Ranch; I couldn't tell you exactly; not on the Sontag Ranch, but on section 22 there. I don't remember the quarter section, that was somewhere right east of the Sontag Ranch, up on the hillside. I think that timber was cut in 1888 by Cunningham. All the logs went to the Blackfoot River and to the Bonner Mill. I was employed about the Bonner Mill as a shipping clerk; I was there seven years; my duties as such shipping clerk were to put all orders in the mill and ship all lumber that came from the mill, that is, that was

(Deposition of Milton Hammond.)

shipped from the mill; the lumber that went to the yards and piled in the yards, I had nothing to do with, but the lumber loaded from the mill I billed it out and shipped it. I got my directions when they wanted to ship out a bill of lumber as to the amount of the lumber, the dimensions and such matters, from C. W. Young, who was the bookkeeper; the second year I was there—the second or third year, I don't remember how long—we changed from time to time. I don't know the prices at all that the company received for the timber it sold during the years I was there, as shipping clerk; I don't know for certain; I have no way of knowing, only from hearsay; what they told me; or what I heard.

Q. Have you any knowledge as to what the general market price or value of the timber was that was sent out of the mill during those years? [130]

A. Well, my recollection, as I say, I don't know for certain that that is right, because I didn't have access to the books, only as we talked, but I am of the impression that the price was about \$10.00 per thousand lumber feet. That is my recollection. I don't know that it is true. That is what I understood.

(Witness Continuing:) I would not say that I was familiar with the market value of lumber in that vicinity.

Q. Was there any other mill close by there or any general market outside of the market of this mill for lumber that was being cut?

A. There were other mills, of course, up at Bitter Root and another mill up at Bonita; of course, I



(Deposition of Milton Hammond.)

know nothing about them. I knew that they were there. I know where some of the lumber was shipped that went out from the Bonner Mill during those years. Some of it went to Anaconda and some went to Butte; some went to Marysville and some went to Missoula; general market all over. They usually sawed all kinds of lumber at the Bonner Mill. There was some mining timber, and lots of 2x4's and 2x6's house timbers, boards.

Q. Do you know whether or not there was any difference in the price of the various lengths of lumber, if the longer lengths would be sold at more or less price than the shorter lengths?

A. Well, I think the price of lumber, the way I remember, was all one price practically, up to 22 ft., after that, I think there was a different price. Now, that is the way I remember it, whether it is straight or not, [131] I don't know. As I say, I had no access to the books; it is hearsay to me. Of course, long lumber would be worth more than short lumber. Lumber that was 20 and 24 ft. long would naturally bring more than shorter lumber, but the prices I did not know.

(Witness Continuing:) I think Cunningham and I scaled what was cut off of section 22 east of the Sontag Ranch. I think it was somewhere about five hundred thousand, something like that, and all those logs went to the Blackfoot and the Bonner Mill. The way I came to go to A. B. Hammond when I was first seeking employment was this, I had written to A. B. Hammond from Stillwater, Minnesota, about

(Deposition of Milton Hammond.)

the business, and he wrote me to come out; well, the way he expressed it, he said he would give me as good a job as I was capable of filling, or something to that effect. When I came out, I looked him up, talked to him some, and he sent me up to George, as I said before. While I was in Stillwater, Minnesota, I had two or three letters from Mr. Hammond. In one of them he told me to hire forty men and come out with them; I picked up a few men there and sent them out here, and finally came myself. Hammond wanted lumbermen. After I came out here I saw two or three of the men that I had sent out to work in the lumber business. I saw them on the Blackfoot, one or two of them; I saw them around Missoula at different places. I see there are one or two here to-day that came out about the time I did. Mr. Green came out about the time I did; maybe a week or a month before.

Q. Do you remember having a conversation with A. B. Hammond about the work of cutting this timber that you testified to? [132]

A. Very little.

Q. Well, did you have any at all?

A. You are asking me something that happened twenty-five years ago. I have not got any data or anything of the kind. I used to see him once in a while and talked to him a little, of course. I remember one conversation, I remember talking to him a little about the scaling up there one time.

Q. When was that conversation? Do you remember about the time?

(Deposition of Milton Hammond.)

A. No, sir, I don't. It must have been about the first year I was there.

Q. What was said to Mr. A. B. Hammond? What was said by Mr. Hammond to you, about the scaling of the timber on the land?

A. I don't know how the conversation started, but he asked me how the scaling compared with the railroad scale. Of course, the railroad had their scaler and we had our own scaler, and he asked me one day how the scales compared. I told him I didn't know; that the orders were to not let each other know, to not let the railroad know what we got; he told me he thought it would be a good thing to understand each other and see how we were getting along. The railroad people used a Doyle rule and the other people used a Scribner, and there might be a little discrepancy between the two rules. After I went back I told George about it, so that we used to compare scales and work together like.

(Witness Continuing:) During the entire period that I was there I received my orders and directions from the same people—practically the same. Mr. A. B. Hammond never told me at any time what relation he bore to the Company that [133] was operating. I don't think he told me what relation Mr. W. H. Hammond had. I never at any time received any directions about the work from A. B. Hammond. I never saw A. B. Hammond on the Blackfoot at all. I have seen him at the Bonner Mill.

Q. What was he doing up at the Bonner Mill?

(Deposition of Milton Hammond.)

A. He would come up from Missoula with a man or two. They would walk around or look at the mill, just on a kind of picnic or excursion, something of that kind, the same as you or I would go to look at the mill.

(Witness Continuing:) I never had any conversation with him in the Missoula Mercantile Company's place of business in Missoula in regard to the cutting of lumber. As to section 18, in 13-14, I couldn't tell you whether the cutting that was done there, which I scaled, was off any particular part of the section or was general all over the entire section. I know that George Hammond worked there at that camp. I think he cut that section. I was there more or less. I don't remember whether any of it was cut off the northwest quarter of section 18. I visited section 18 the other day. I saw the northwest corner, the corner stone of that. Dunnigan or George Hammond cut all around that corner stone. I don't know whether they cut any off of the northwest quarter of section 18.

Q. Do you remember whether or not there was any cutting done off of that, the northwest quarter of 18?

A. Yes, of course.

Q. And who do you say did that cutting?

A. My impression is, as I told you before, I think George Hammond cut it. It might have been George Hammond or Dunnigan. I couldn't say for certain. They both worked in there; which one did it for sure, I couldn't say positively. [134]



**[Deposition of James Van Keuren, for Plaintiff.]**

The deposition of JAMES VAN KEUREN, a witness called and sworn on behalf of the plaintiff, was thereupon offered and read in evidence by the plaintiff, as follows:

**Direct Examination.**

I am fifty-eight years old. I came to the State of Montana in 1885 from Whittlessee, Wisconsin. I first met Mr. Thomas Hathaway in Idaho. After that I met him in Missoula. Hathaway asked me to go to work for the Company. He took me up to the office and introduced me to Mr. A. B. Hammond. He asked me first what I worked at; I told him I was an ox teamster; he introduced me as an ox teamster or laborer to Mr. A. B. Hammond. Mr. Hammond wanted me to go up there to go to work at Wallace. I asked him what he was paying. He told me. He gave me a letter to go to work to take to Mr. Henry Hammond. Mr. Henry Hammond, it seems, was the push up there. I went up there and Henry Hammond told me they were full handed there. He said, you stay here. I will go to Bonita and see how they are fixed up there, and if they are full handed up there, I will put you to work here anyway; I stopped there and he came back and told me to go up to Bonita, and I went to work at Bonita driving cattle, skidding, and I did some loading. This was in the fall of 1885. When I went to work there, the mill had been set and established on section 14 in the Hellgate River.

(Deposition of James Van Keuren.)

Q. Did you do any logging and skidding around the vicinity of the mill, near Hutchin's Gulch and Welsh's Gulch, around close to the mill on 14?

A. Well, across from the mill I did, up the river.

(Witness Continuing:) Recently I have gone over section 14 and had the section lines pointed out to me. The logging that I did [135] in the vicinity was east across the river on section 14. I did some logging north and east of the mill, on about what would be a part of section 10. I did that in the fall of 1885. I logged up on what is known as Cramer Gulch. I was there a little bit in 1885 and in the spring of '86, and all these logs that were taken off Cramer Gulch in section 14 went to the Bonita Mill, on section 14. I never logged any out of Rich's Gulch. I saw Mr. Rich logging there. I am not quite positive what year Mr. Rich logged in there, but I will try to recall the time that I saw him there; that was in '87. When I cut the timber off section 10, there were two different foremen during that time. Mr. Kenneth Ross and Fred Hammond the other; Ross also was foreman when I skidded off section 2 in Cramer Gulch. I saw logs hauled from in and about Tyler Gulch and they went into the river there and I suppose to the Mill at Bonita. I couldn't testify to that, they were hauled to the river. It was the Bonita outfit who was handling these logs out of Rich's Gulch. By the Bonita outfit, I mean it was then called Fenwick. I saw them hauling off section 2 that lies just to the north. They were hauled to the river. It was in '87 that logs were taken off of

(Deposition of James Van Keuren.)

Tyler Gulch, off 22. I was familiar with the general scope of country up and down the Hellgate River and the Northern Pacific Railroad along east from Bonita up the river. During that time there was not any other sawmill or outfit engaged in logging between Bonita and Bear Mouth. I did not myself log or assist in hauling the logs off 22 or 26. I was not employed there. During the time that I was employed in this region logging, I was paid for my services at Missoula, sometimes in cash, sometimes by check. The checks that I got at that time were [136] signed by the bookkeeper. I forget his name—the bookkeeper paid out the cash and that was in the office there in Missoula maintained by the Missoula Mercantile Company. In '86 I had a contract to take logs to the Bonita Mill. I made it with Mr. Tom Hathaway at Missoula. When I talked with him we were in the Missoula Mercantile Company's office, and went out of there into a confectionery store, and he used the phone in there, and we made a deal in this confectionery store, Mr. Hathaway and I. He was talking to Mr. Fenwick over the telephone. Under the terms of that contract I was to put logs on the bank for them for \$4.00 a thousand, log measure, anywhere along the river between Tyler Bridge and two miles and a half west of Bear Mouth. I fulfilled my contract and received my money. I was paid in cash principally, that is only what I had got in supplies and horses and such things as that. As to these horses, I got one pair at Bonita from Mr. Fenwick and I got two more

(Deposition of James Van Keuren.)

horses through Mr. Hammond in Missoula, bought one direct from Mr. A. B. Hammond and Mr. Hammond got me the other one. I gave Mr. Hammond credit on the amount they owed me for the horses that Mr. Hammond turned over to me on the contract under which I had been logging. That contract was verbal. I can remember some of it—the way that he was using the phone talking to Mr. Fenwick I could hear what Mr. Hathaway said; of course, I couldn't hear what Mr. Fenwick said, only as Mr. Hathaway would tell me, and Mr. Fenwick didn't want anything to do with the logging proposition because he thought I had no money or no stock. Mr. Hathaway told him that I had both money and stock and the Company would supply me. He didn't say what company. [137]

Cross-examination.

That was the Missoula Mercantile Company that supplied me with tools and grub and supplies and stock, and I paid for these things out of this money that was coming to me out of this logging contract upon its completion.

Q. Now, this contract was made with Mr. Fenwick, wasn't it? A. With Mr. Hathaway.

Q. Made by Mr. Hathaway for Mr. Fenwick?

A. Mr. Hathaway and I made the contract.

Q. He consulted with Mr. Fenwick first, for all that, isn't that right?

A. It seems that Mr. Fenwick would not have anything to do with it.

Q. And then when Mr. Fenwick found that the



(Deposition of James Van Keuren.)

company took stock in you and your ability to carry out your agreement, and that the company would let you have credit, Mr. Fenwick consented to enter into that contract with you?     A. Not at that time.

Q. He did consent to enter into a contract with you?     A. Not at that time.

Q. When did he?     A. Later on.

Q. Another contract, entirely, you mean?

A. No, sir.

Q. The same contract?     A. The same contract.

(Witness Continuing:) The time the contract was made Mr. Fenwick would have nothing to do with it—at the time Mr. Hathaway made [138] the contract. I had no contract with Fenwick at all; never made no contract with Fenwick at all. I got paid for the work I did through supplies and money through the Mercantile office at Missoula. There was a little left over for me after I had paid for my supplies. I don't know whether I was paid cash or by check. It was the same thing. I got it from the head bookkeeper—the head bookkeeper used to do all his cash business there—not the bookkeeper at the mill. I know his name well if I could think of it. G. W. Fenwick sent a scaler up there to scale the logs I cut—as I cut them and brought them to the river bank. That man came from the mill at Bonita, and I suppose Mr. Fenwick sent him out. I was in Cramer Gulch in 1886. In the spring of 1886, when I came down from Bonita, I went down to the office and A. B. Hammond sent me up to Blackfoot. He was in the office at the Missoula Mercantile Company;

(Deposition of James Van Keuren.)

he sent me up on the Blackfoot to drive team, horses that time, and I went up. I was up there a very short time on the Blackfoot, came down from the hills and went down below Missoula about six miles with a man by the name of John Rankin.

Recross-examination.

I testified that I bought one or two horses from Mr. A. B. Hammond. It was two horses. I paid for those horses with those logs that I cut for them at \$4.00 a thousand. In other words, in my account with the Missoula Mercantile Company I was charged with the price of those two horses, and when I came to settle up with the Missoula Mercantile Company, I was paid just that much less; that is to say, the price of those two horses from what was coming to me, and less the supplies that I had. [139]

Redirect Examination.

The contract for those two horses was made between me and Mr. A. B. Hammond personally.

**[Deposition of Thomas Guinnane, for Plaintiff.]**

The deposition of THOMAS GUINNANE, a witness called and sworn on behalf of the plaintiff, was offered and read in evidence by the plaintiff, as follows:

Direct Examination.

I reside about five miles west of Bear Mouth. My business is farming principally; I have worked a little in the woods. Formerly I resided in the neighborhood of Tyler Gulch—within a mile of it. In the spring of '87 I remember my mother boarding some

.(Deposition of Thomas Guinnane.)

loggers at a place called Carlin, now named Nimrod. Those loggers were rolling logs in the river on the north side right below the section-house. The logs that they were rolling into the river had been cut on both sides of the river. The logs that they rolled in there at Carlin did not come from the vicinity of Tyler Gulch, but I saw these men taking from Tyler Gulch and piling up on the banks of the river by Tyler Gulch Toll Bridge. I did not know who the men were that took the logs. I saw some logs taken from the vicinity of what is known as Medicine Tree Hill. Some of them were piled up at Carlin that were taken off from the west side of it. To the best of my knowledge these logs were taken out the winter of '86 and '87. The men that cut the logs on Tyler Creek boarded at my mother's house the fall of '86. Felix Cyr was one of the *man* who worked there. I think these logs were put in the river there at the Tyler Bridge. I couldn't say where they were ultimately taken. I knew of the existence of a sawmill at Bonita, in the spring of '87. There was no other mill being operated [140] there that I know of along the river that those logs might have been driven to. Mr. Fenwick was foreman over the men that drove the logs into the river at Nimrod.

#### Redirect Examination.

I recognized these portions where I saw them cutting timber off as what is now known as sections 22 and 26 and a part of section 24.

**[Deposition of Patrick Joyce, for Plaintiff.]**

The deposition of PATRICK JOYCE, a witness called and sworn on behalf of the plaintiff, was offered and read in evidence by the plaintiff, as follows:

**Direct Examination.**

I reside at Potomac, Montana. I am farming. I have resided in the State of Montana since '82, and am about fifty or fifty-one years old. I live in the Potomac Valley, Camas Prairie, which is a tributary to the Big Blackfoot Valley. I was first employed logging at the Eckwall Camp in the fall of '85. I worked until toward the spring of '86. Eckwall Camp was located on the Nine Mile Prairie on the north side of the Blackfoot River. I did sawing around the Eckwall Camp, sawing standing trees. I couldn't tell how many log feet were cut in the Eckwall Camp in the winter of '85 and '86; most of the logs that were cut that winter in the Eckwall Camp were hauled into the Big Blackfoot River. I took most of my pay out in grub, part of it I got paid at the Mercantile Company. I received the grub that I got for my pay from the Eckwall Camp. They didn't have much of a supply store there—I didn't think they was good—I drew all the grub I could. For the balance of my pay for my work W. H. Hammond gave me an order on the Missoula Mercantile Company. That is what is the Missoula Mercantile Company now. I don't remember what was the title then. The way I came to get paid [141] the balance due me was this. I was



(Deposition of Patrick Joyce.)

at headquarters, Mr. Henry Hammond's headquarters at Clinton, and he gave me an order for the balance on the Mercantile store at Missoula. After the Eckwall camp broke up, I went to work at Headquarters at Fish Creek, and was employed there by George Hammond. I worked until the time of the drive in the spring of '86. My particular work at that time was mostly sawing. I worked awhile with J. B. Seely and awhile with Tom Ginn. I worked for Ernest Kilburn. The cutting that I did in the spring of '86 was at the mouth of Fish Creek—from there on down below the mouth of Elk Creek. I at that time had heard of a claim called the Edgar claim. I did not do any cutting on that claim. I don't think that claim had been cut in the spring of '86. The logs that we worked on there at the mouth of Fish Creek in the spring of '86 were what we call go-deviled into the river. They were driven in the river. I think Bob Coombs had charge of the drive for the Hammond Camp on Fish Creek. I think George Hammond was there also. I went down the river part of the way with the drive that spring, down below the mouth of Elk Creek. The logs were being driven downstream. That spring there was a mill at Bonner, known as the Blackfoot Mill, and there was no other mill on the Blackfoot River at that time to which logs could have been driven. I have seen the old Sontag Ranch several times. I worked in the woods there that spring. I quit working under George Hammond at the Fish Creek Camp when I was on the drive. I was on the public sur-

(Deposition of Patrick Joyce.)

vey of the lands in the Blackfoot Valley. I worked there until fall.

Q. Were you ever employed by any Special Agent, or employee of the General Land Office of the United States to do any [142] scaling for the Big Blackfoot Valley?

A. I was engaged to help Scales, help packing, help them cruising and showed them lines and help them run out lines and help them count stumps in several places.

Q. And Mr. Scales was an employee of the Government, was he not? A. Yes, sir.

(Witness Continuing:) While I was working for Mr. Scales I helped do the counting of stumps on the Edgar claim. That was when Scales was cruising there; I don't remember the year now; it was several years after I quit working for Hammond. We scaled and counted the stumps on the Edgar claim and when we got through counting that piece of ground, then we tallied up to see how we stood; it was about right; had the same count. I have no recollection now of the number of trees I counted; I had then but I have forgotten it now. The cutting on the Edgar claim had been general and was not confined to particular spots. It was very nice timber. The best merchantable part of the timber was cut off. No one was living on the Edgar claim when I counted it. Referring to the time I was working for George Hammond at the Fish Creek Camp, I saw A. B. Hammond on the drive there. He came to where we were driving. That was in the

(Deposition of Patrick Joyce.)

year 1886. I heard a conversation between A. B. Hammond and George Hammond at that time—made it public to the men. At that time there was quite a few quitting and discharged, and they were shorthanded there, and A. B. Hammond came up there and he finally told George Hammond that the next man that would go down he, that is George Hammond, would go down, too. The [143] work that was being done by me and Mr. Scales terminated suddenly. I kept copies of the records made at that time in the field. Scales took them away with him. I have never seen those records since.

Redirect Examination.

Mr. Hammond wasn't there very long in and about Fish Creek Camp at the time of this conversation with George Hammond. I couldn't say whether at any time he was there they were engaged in driving logs or handling the logs. He was there and that was the orders he gave George Hammond.

Recross-examination.

That was the only occasion on which I saw Mr. A. B. Hammond up on Blackfoot. I have seen him afterwards since then.

Redirect Examination.

I never saw him at any other time that I know of when logging was being carried on.

**[Deposition of John Graham, for Plaintiff.]**

The deposition of JOHN GRAHAM, a witness called and sworn on behalf of the plaintiff, was offered and read in evidence by the plaintiff, as follows:

(Deposition of John Graham.)

Direct Examination.

I am sixty-seven years old, and reside at Potomac, or at Nine Mile Prairie at present. I am a rancher by occupation. I have lived here since 1886. I used to work for the defendant, commenced working at logging in the Big Blackfoot Valley in 1886. I supposed I was working for Mr. Hammond. I was not employed at all. I was sent up to the Cunningham Camp by Henry Hammond. Cunningham Camp was located at that time at what was known as the Eckwall Camp. The camp was located on the edge of what is now known as Nine Mile Prairie. I worked at the Eckwall Camp pretty near all winter under the direction of John Cunningham. The nature of my work was driving horses, engaged in [144] hauling logs. The land on which the timber was cut and from which I drove the logs in the year of '86 in the neighborhood of Eckwall Camp was sections 17 and 18, in township 14 north, range 15 west. I have no recollection of the amount of logs that I took off. The logs were taken to the river that winter. They were finishing building a mill on the Big Blackfoot River at Bonner. I have never seen any other mill on the river that winter to which the logs could have been conveniently driven. After I finished my work at the Eckwall Camp, I think I worked awhile at the Fish Creek Camp in the spring of the year. I was just a general hand around the camp. I was working under Robert Moore, who was foreman of the camp. I don't know anything about to whom the camp belonged. For my work I was



(Deposition of John Graham.)

paid by an order from Bonner to the store. I cannot recollect who sent the order to me at Bonner. The store I refer to is that known as the Missoula Mercantile Company's store at Missoula. I was always paid in cash on these orders of the Missoula Mercantile Company. I helped work in the spring of '87, near the camp on Belmont Creek; worked awhile with a man by the name of Harrington that was taking charge of the company, doing some shore logging. I don't know what the sections were. This was in the summer of '87 before the drive. Possibly it was the foreman asked me to go there to that place on Belmont Creek. I didn't get any order from Mr. Hammond. Generally, if the foreman wanted a man, I just had a chance to go to work. I have no idea or remembrance of the quantity of logs that were taken off there. And these logs went into the Bonner River the same as the rest. I couldn't tell you the number of the section. [145]. I think there were others working there besides me and Harrington in the fall of '87. I supposed I was working for the Hammond people, was sent up by Mr. Henry Hammond, but cannot recollect where. I worked on the Longley Flat in the fall of '87 or '88. Robert Moore had charge of this work, on Longley Flat. Pat Hayes came there in the winter—he run the camp in the winter. The first work we done was in a camp under Hayes. As usual my work consisted on the Longley Flat of a team and it continued there until such time as they went on the drive. In the winter of '88 and '89 I was working for Pat Hayes. I

(Deposition of John Graham.)

worked for R. J. McLaughlin in the spring of '89. His camp was on Blanchard Creek in the fall. I worked for him in the winter, sometime in the spring. The logs that were cut off in the vicinity of that camp were taken to the Clearwater.

Mr. HALL.—I will cut out what follows because it has reference to section 8, which has been eliminated.

(Witness Continuing:.) In the fall of '89, before I went to Blanchard Creek I was employed at the Headquarters Camp, at Fish Creek. Skidded logs pretty nearly all that summer or a good part of the summer; these logs came from lands east, I think, of Sontag Ranch. I guess that would be the direction. At the time I skidded the logs out of there I think there had been no logs cut at that time on the land lying to the south of the Sontag ranch house. There might have been. I don't know. I wouldn't be sure. I won't say anything about it, anyway. I never hauled any logs off of the claim known as the Edgar claim. I think I was in the office of the Missoula Mercantile Company to get my pay during the spring of '87. I met there Mr. A. B. Hammond; at any rate, then or sometime [146] while I was working up the Big Blackfoot, Mr. Hammond asked me how many logs we had got down on that drive; we drove from Gold Creek; I told him probably the foreman of the drive would tell him.

#### Redirect Examination.

R. J. McLaughlin, I don't know where he is. I haven't heard anything of him for the last two years;

(Deposition of John Graham.)

I think he is in the western part of the State or in Idaho. Bob Coombs is dead. At the time I was working on what is known as Longley Flat, I don't think that Mr. Longley lived there. If my memory serves me right, it was after that that he lived there. I remember of seeing him living in that immediate vicinity. I couldn't tell you whether the cutting that was done on the Longley Flat was done around the immediate vicinity of where I afterwards saw his buildings. The logs were cut in the neighborhood. The camp was very close to where he built his buildings. The timber was cut pretty close on one side where the camp was located. While I say it was cut pretty close to the camp, I don't know the distance from the buildings.

**[Deposition of M. J. Haley, for Plaintiff.]**

The deposition of M. J. HALEY, a witness called and sworn on behalf of the plaintiff, was offered and read in evidence by the plaintiff, as follows:

**Direct Examination.**

I reside here in Helena. By occupation I am Chief Probation Officer. I have lived with my family in the State of Montana twenty-three years, but I will be in Montana twenty-seven years next December. I was employed as a Special Agent of the General Land Office of the United States and I lacked a little over four months of filling that position for eight years. It was the latter part of [147] December, 1884, that I began to act as Special Agent and I continued so to act until July 31, I think it was,

(Deposition of M. J. Haley.)

1892. I made an examination of the land known as the Edgar claim, that is the southeast quarter of section 28, township 14 north, range 14 west, to ascertain the amount of timber cut therefrom. I counted the stumps and averaged, it was not a perfect scale. I didn't make a stump and top scale to ascertain the board feet. I made two separate examinations in that region, one two years after the other. The first examination was made, I think, in 1886. It might have been '87, but it was '86 or '87. It was in the fall of the year or late in the summer. I have forgotten as to the manner in which the timber had been cut and removed. I investigated so many cases that I have forgotten. At that time I made notes of my investigation. I had a book, something like a scaler's book, and each evening we would meet there and I would put down the aggregate amount that each one would report; I think there were five of us for awhile. I had a talk the other day with Mr. Helmick and he said there were but four when he was with me, that is there were five of us but there was one that didn't do any scaling. I think it was on the first examination, which was in the summer, that Mr. Reeder was with me. I do not remember now the amount of timber that had been cut off, not even approximately; I couldn't guess at it now. As to whether all or just a portion of it had been cut off at that time, I think the tract that we examined, if I am not mistaken, the largest timber was cut, the so-called saw timber, I think it was, I am not sure. I don't remember whether there were any trees left standing over the



(Deposition of M. J. Haley.)

area from which saw timber had been taken. It was in the neighborhood of three years after [148] my visit with Mr. Reeder that I went back there again with Mr. Helmick. There was more timber cut in that region at the time of my visit with Mr. Helmick than had been cut at the time of my visit with Mr. Reeder.

Q. Did you have any conversation with any person in regard to the timber that had been cut from that quarter section?     A. What quarter section?

Q. The Edgar quarter section.

A. You have got around on different places.

Q. I understand you, I am asking you solely about the Edgar quarter.

A. Yes, I have talked with persons about that.

(Witness Continuing:) I had a talk with Mrs. Edgar, the entryman's wife. I don't remember whether I had any talk with any person who claimed the logs that had been taken off. I might have. Now, that you have refreshed my memory and asked if I had any talk with Henry Hammond, I think perhaps I did. He was not present on the claim when I was there. If I had a talk with him at all, I think it was at Bonner. I have no notes now that would refresh my memory as to the amount of timber that I found had been cut on the Edgar claim. As to what became of my notes, if you will allow me to explain—along about 1893 I was under the impression, I was so informed, that all those cases were dismissed, and whether myself or whether my wife destroyed those, I don't know, in fact, I don't know what became of

(Deposition of M. J. Haley.)

them; I have looked for them since. When I made examinations at the Edgar claim, I think there were some logs cut on the ground that had not been removed. As to [149], the character of the timber that was cut down, merchantable sawlogs or of a general character, I am not certain, I am not sure about it; I think that they were sawlogs.

I was familiar with the market value of timber in that vicinity during the time I made my several examinations there. That value was about \$10.00 a thousand for manufactured lumber, board measure; that is such lumber as could possibly have been manufactured from the logs found there in the vicinity of the Edgar claim. I don't think there were any other sawmills on the river during the time I made my several visits to the Edgar claim to which the logs cut therefrom might have been driven. I know of a sawmill at Bonner. I don't know who was operating that sawmill at Bonner during those years. The party that seemed in charge of the whole thing was Henry Hammond. I don't know who was in the full charge of the sawmill at Bonner. I know Mr. C. H. McLeod. I did not have any dealings with him in regard to these timber trespasses. I don't think I had any conversation with him in regard to the ownership of the mill at Bonner. I might have, but if I did, I have forgotten. I do not know what Mr. McLeod's business was during those years, but I did know what his business was later on. I was not friendly with Mr. McLeod during those years. I first got acquainted with him—I knew who he was from

(Deposition of M. J. Haley.)

perhaps '87 or '88. I knew that he was working in the mill owned by the Missoula Mercantile Company. I knew A. B. Hammond during those years. He was located at that time at Missoula. As to his occupation, I understood him to be an officer of the Montana Improvement Company, not the president, I think Mr. Bonner was the president, but latterly he was president of the Missoula Mercantile Company, as I [150] understood it. During those years of my official capacity, I examined to ascertain what disposition was ultimately made of the logs that were being cut by Henry Hammond in the Blackfoot Valley. I think it was shipped different places. I have forgotten where. It was sawed into lumber at the Bonner Mill, as I understood it. I should say that the fair market value of this saw lumber at the Bonner Mill, from, say, the years 1886 up until 1890, or 1892, was somewhere between \$7.00 and \$10.00 a thousand. I don't know, but I suppose the price increased according to the grade and size of the lumber. I had a conversation with A. B. Hammond about the general cutting up and down the Big Blackfoot River. I don't know as I had a conversation about the cutting on the Edgar claim. I don't remember what Mr. Hammond told me of the general cutting, only that I know he would assert that they were cutting within legal bounds and all that.

Q. That is, he, and the other Hammonds, they were cutting on the Blackfoot and they were living within the law.

(Deposition of M. J. Haley.)

A. That the company, I don't remember the exact statement, but it was to that effect, that they were.

(Witness Continuing:) I think we had a talk about it two or three times, perhaps oftener than that.

Q. Did Mr. Hammond, or did he not, assume to be in control or have anything to do with that cutting that was then going on on the Blackfoot River?

A. He let me know that he was the head of the whole thing.

Cross-examination.

Q. What did Mr. Hammond say to you? [151]

A. I don't remember what he said, but the impression he gave me was that he was the—that it belonged to the company.

(Witness Continuing:) That is the impression that I have now and that was told me twenty-five years ago. I got the impression from George R. Ogden, whose father was connected with the General Land Office, that these cases, including within them the matter of the Edgar claim, were dismissed along about 1893. George R. Ogden was graduated from the Washington High School about '85. His father was G. V. N. Ogden. The latter had a position in the General Land Office, sort of charge of fraudulent timber cutting in Montana. He was in the service in Washington City when I was appointed. In 1889 he was solely in Montana in charge of matters here; in 1890, in Idaho; and in 1891 back here again in Montana. In 1889 Mr. Ogden was at Thompson Falls—I am sure. As to when I got this information



(Deposition of M. J. Haley.)

from Mr. Ogden, I don't remember when it was; I think I received the information from Mr. Ogden, but it might have been from the United States District Attorney for Montana, Mr. Weed, but I didn't receive the information until at least the fall of '93. I was out of the service July 31, 1892. It was about a year after that that I heard those cases were dismissed. The elder Mr. Ogden discussed with me the merits of these cases, including the Edgar claim.

Q. I will ask you, Mr. Haley, if at any time when you took up the merits of this Edgar claim, or any other of those timber trespass cases pending in Montana at that time, whether you made any written statement and submitted the same to Mr. Ogden. [152]

A. Well, Mr. Ogden and I discussed the thing, and I think it is in his handwriting. He wrote a statement and we signed it.

Q. Reciting what you told him about it?

A. I don't remember, except that it was along the lines, that years had elapsed and it was doubtful about the result of the case, something of that sort, I don't remember what it was.

#### Redirect Examination.

I don't know that George Ogden ever became the attorney for Missoula Mercantile Company. I don't know how long after 1891 he quit the Government service. As I understood, he was a clerk in the General Land Office for a time. The last I saw or heard of George R. Ogden, I saw him at Livingston here a few years ago. I think he remained in and about

(Deposition of M. J. Haley.)

Missoula in the years succeeding 1891 for some time, at different times. He was in the office of the attorneys for the Missoula Mercantile Company, Mr. Marshall and Mr. Stiff. I don't know, but I think this was immediately after he quit the Government service. I think that he had been a clerk in the General Land Office before he came to Montana and went into their office.

Q. And during the time that Mr. George R. Ogden was there in the office of Marshall & Stiff, his father G. V. N. Ogden was a clerk in the General Land Office at Washington, was he not? A. In 1891?

Q. Yes, 1890, 1889, and 1891.

A. I think he died before 1891, I am not sure, though, whether or not he was living at that time. [153]

(Witness Continuing:) G. V. N. Ogden was living and in the employ of the Government at the time this statement was made and signed by myself and him. Young George R. Ogden at the time that statement was made and signed was, I think, here in town in the employ of the Government.

Friday, January 17th, 1913.

**[Testimony of Charles T. McCullach, for Plaintiff.]**

CHARLES T. McCULLACH, a witness called and sworn on behalf of the plaintiff, testified as follows:

Direct Examination.

I reside at Uplands, California. By occupation I am assistant cashier of the First National Bank. I have resided at Uplands eleven years. I think I

(Testimony of Charles T. McCullach.)

have occupied my present position with the bank six years. They made a change there since I have been there. Formerly I resided in Montana. I first went to Montana in 1888. I was employed by the Helena Lumber Company in Helena. A man by the name of Cameron was manager of the company, I think, and he employed me to work there. I was bookkeeper, and as such bookkeeper had charge of the accounts which indicated the source from which lumber was procured by the Helena Lumber Company. I cannot quite give from memory all of the mills from which lumber was received by the Helena Lumber Company during the time I was employed by it; but the principal shipments were from Bonner. As to the name in which the account between the Helena Lumber Company and the Mill at Bonner was carried, my recollection is that part of the time it was carried as the Blackfoot Milling and Manufacturing Company. It was afterwards changed to the Big Blackfoot Milling Company. I don't remember the exact length of time I remained at the Helena Yard—just one season. While I was working there in the [154] Helena Yard I saw A. B. Hammond there. Apparently he was looking over the business there in a general way. As a bookkeeper I had conversation with him in regard to the business of the Helena Lumber Company. I couldn't say that he made a thorough examination of the books or anything of the kind, but where matters came up that he wanted to know—that is, he had access to the books. I would not say that he

(Testimony of Charles T. McCullach.)

made a thorough examination or anything like that, put in any great length of time looking at the books. He would ask questions about them. I was acquainted with Thomas G. Hathaway, Sr. He was present at the Helena Lumber Yard during part of the time I was working there. I have always recognized him as an auditor, but he acted also in the capacity of a salesman, a general adviser. I was employed by a firm known as D. H. Ross & Company, located at Missoula, Montana. I am not quite clear as to the year when I entered the employment of that concern, whether it was 1890 or 1891. The circumstances under which I was employed to work in that yard were as follows: After I left the Helena Lumber Company I went South and was brought back to Helena as a witness in a case that the Helena Lumber Company had with Cameron, their manager. He defrauded them of some money, and I was one of the witnesses there, and during the time I was there as a witness, Mr. Thomas G. Hathaway asked me to go to Missoula there and take charge of the books. He said that they had a bookkeeper there that was not satisfactory and I went over and took his place. That was in the D. H. Ross Yard. I don't know at that time who owned that yard, but during the time that I was there it developed that W. H. Hammond owned it personally. He is sometimes called Henry Hammond. D. H. Ross & Company received [155] its supply of lumber principally from Bonner, but not necessarily altogether. I am not quite clear on the point as to the name in which the account be-



(Testimony of Charles T. McCullach.)

tween D. H. Ross and Company and the mill at Bonner was carried. I was of the impression that it was carried in the name of the Blackfoot Milling and Manufacturing Company, and about the time of the transfer and after that in the name of the Big Blackfoot Milling Company, but it is possible that they had an account there with W. H. Hammond personally. I would not say positively as to that. I had no occasion to think about it since. It has been sometime ago. I do not remember of Mr. A. B. Hammond ever speaking to me about my employment with the D. H. Ross & Company yard during the time I was there when it was run in the name of D. H. Ross & Company. Afterwards I was manager of that yard, under a different name. I rather think the name was changed before I became manager to the Big Blackfoot Milling Company. I don't remember the exact date I was made manager. I was there likely about three years, I think possibly 1892. It was sometime in the winter when I took charge. More than likely, about January 1, 1892. I would say that, but I would not say so positively. The final arrangement resulting in my employment as manager of that yard was made by A. B. Hammond personally.

#### Cross-examination.

The Helena Lumber Company was a corporation. I do not know of my own knowledge whether A. B. Hammond owned any stock in that corporation—only the verbal statements of the officers of the company. I know nothing as to the actual fact of

(Testimony of Charles T. McCullach.)

whether he did own any stock there or not. As to who else I know as owning any stock there, I don't remember [156] of ever seeing a stock book and I could not say that I did. There were men there that were recognized as being in authority and they would recognize the stockholders in a general way, and myself, as an employee of the company, recognized them; as to the names of those stockholders—Valentine H. Coombs was President and Cameron, my recollection is that his initials were W. H., was Secretary, and there was a young man that was manager of the planing-mill by the name of Gunter. He claimed to have \$2,500 worth of stock in the company, and a man by the name of Hoskins. The Missoula Mercantile Company did not own any of the stock in that corporation to my knowledge. The firm of Eddy-Hammond & Company did not own any stock in that corporation to my knowledge; nor did the Montana Improvement Company. W. H. Hammond who was connected with the Company was the same W. H. Hammond who was at the Bonner Mill. That concern at Helena received shipments from the Bonner Mill. I do not know of any shipments being received from the Bonita Mill. As to other shipments being received from any other mill than the Bonner Mill, we shipped some Oregon fir from coast points. It was a retail lumber yard, but we shipped nothing but Montana lumber, except where the architect's specifications called for outside material. We sold nothing but Montana lumber generally. Possibly we may have bought our Mon-

(Testimony of Charles T. McCullach.)

tana lumber from other mills than the Bonner Mill, but I do not remember that we did. Our instructions were to use everything we could from the Bonner Mill, only buy outside lumber when the specifications required material to be used that we could not get at Bonner. That is the way I understood it. The only knowledge that I have as to whether A. B. Hammond was a stockholder of that corporation or not, is the statements of the officers of the Company there to me as to [157] who was in authority and who had the right as a boss over me and those who I was told had rights as a boss over me were those I have named as stockholders. Everybody told me that a man by the name of A. B. Hammond owned that mill. He stood in a different arrangement than any of these other persons that I have named. He was not an officer of the corporation, but he was recognized as the general financier of the company. It was at both places that he came to look over my books. I couldn't state how often Mr. A. B. Hammond came to Helena while I was there. Not very often. I was there just one season and during that time I couldn't state that I saw him more than five or six times. I cannot give the dates approximately when Mr. Hammond was there. As to when the season that I speak of began and ended, I don't remember. My recollection is that I went there before the opening of the season, sometime in the winter or spring like, and remained there sometime until the following fall or winter. At Helena the weather is so bad, we recognize the summer season

(Testimony of Charles T. McCullach.)

different from the winter season. When I say I was there one season, I mean I was there something less than a year. My recollection is that it began in 1888, I could not say positively though. It began and ended in the same year. By going there the first of the year and staying there less than twelve months, it would begin and end both in the same year. I did not remain there during two years. This Helena Lumber Company handled other commodities besides dealing in lumber, namely, coal and lime, and possibly we did handle some building paper.

Q. Just what do you recollect that Mr. Hammond instructed you about when he was there these five or six or seven occasions during that year that you were there? Did [158] he ever give you any actual instructions, or did he merely examine the books or ask for some information?

A. Well, the only particular thing that I recollect was in regard to some matters that had taken place before my time. He came to the office one day, the manager wasn't there, and he asked me in regard to issuing stock and spoke to me, in a general way, as if I knew what he was talking about. I remember that one thing distinctly, that there was some question about the security that these small stockholders had put up for their stock. As I understood from his conversation, they had not paid for their stock. It was sold to them as a credit proposition and there was some question about the securities, and he asked me in a general way as bookkeeper why I did not



(Testimony of Charles T. McCullach.)

understand these things. It was before my time and it was a question that I did not understand and did not know anything about.

(Witness Continuing:) He asked me some questions connected with the stock at the organization of the Helena Lumber Company itself. It was organized before I went there. That is the only thing that I remember particularly about. I was at Bonner and saw the plant there. It was quite a large establishment; they cut a great many thousand feet of lumber. There was nothing to show me at the lumber yard what particular land any lumber came from, whether it was from a piece of land known as the Eddy claim or whether it was from a piece of railroad land.

Q. So that merely going to this yard of the Helena Lumber Company and making an inspection of that lumber-yard, you couldn't tell whether it came from Government land or railroad land, could you? That is, Mr. Hammond couldn't [159] tell, if he had gone there and made an inspection of that lumber? No accounts were kept of that?

A. Not to my knowledge.

(Witness Continuing:) There was nothing that came under my observation in the way of records kept at the Helena office which would show where the lumber that was in that yard came from, so far as the section of land from which it had been cut was concerned. There was nothing that came under my observation in the way of records that would tell any man whether a piece of lumber came from one sec-

(Testimony of Charles T. McCullach.)

tion or another section of land. With regard to the Helena yard, an account was kept of the lumber that came from the Blackfoot Mill. My recollection is that when I first went to the Helena yard, the account was in the name of the Blackfoot Milling and Manufacturing Company. I can say positively that the account was never kept in the name of the Blackfoot Mill, but I would not say positively that it was not at first kept in the name of Henry Hammond or W. H. Hammond. I know that the lumber was always billed out on their regular billheads, and the first company was the Blackfoot Milling and Manufacturing Company, what was afterwards changed to the Big Blackfoot Milling Company. Of course, they had their regular printed billheads. It was all billed out in that way. I don't know anything about prior to the time I went there, but at the time I accepted my first employment, there was a corporation known as the Blackfoot Milling and Manufacturing Company, and though my employment was after the organization of that corporation, it may have been that the account was kept in the name of Henry Hammond or W. H. Hammond, so far as the business there in Helena is concerned. The time I went to Helena, I did not have any knowledge or [160] information as to whether Henry Hammond, called also W. H. Hammond, was at that time the lessee of the Blackfoot Mill. It was never developed to me that Henry Hammond was the lessee until I got interested in D. H. Ross & Company's books at Missoula. Then I learned he was at that time the lessee.

(Testimony of Charles T. McCullach.)

I don't think I learned that he had for sometime prior to that time been the lessee. I don't think that part of it was developed to me from the accounts that I had charge of. I would not touch on that matter, you see. As to the circumstances under which D. H. Ross & Company went out of business, I am not clear whether that occurred at the same time that the Bonner Mill changed its name or not. That is one point that I am not clear on, or why they changed the name. I don't know about that. I know it is a fact that the lumber yard of D. H. Ross & Company account with the Bonner Mill was made over to Henry Hammond, also called W. H. Hammond. I know it developed from the books, in making the entries on books, that W. H. Hammond was the sole owner of the retail yard at Missoula, where we were just retail sales agents. I couldn't swear positively as to the time this ceased to be D. H. Ross & Company's yard. It has been so long ago, it is pretty hard for me to remember these things. It may have been 1891, 1892 or 1893, along about that time, and when the transfer was made, it was made to the Big Blackfoot Milling Company.

Q. From the Blackfoot Milling and Manufacturing Company, the earlier corporation that had existed?

A. No; my recollection is that the transfer was made either exactly at the date of the change of the name or afterwards—the change of the name from Blackfoot [161] Milling and Manufacturing Company to Big Blackfoot Milling Company.

(Testimony of Charles T. McCullach.)

(Witness Continuing:) I remember that a change did take place during the time I was there and a new corporation was organized. With regard to this new corporation, the Big Blackfoot Milling Company, I never knew anything about it or who its stockholders were. I couldn't say whether they were the same people or different people from those who were connected with the Missoula Mercantile Company, only as to their authority over me in the position that I occupied, and they were the same people that I knew were connected with both companies. I never had any idea and I did not know what were Henry Hammond's relations to the Missoula Mercantile Company. So far as I know, he had no interest in the Missoula Mercantile Company at any time. Henry Hammond exercised authority over me as an employee of the Big Blackfoot Milling Company. A. B. Hammond made the final arrangements for my employment by the Big Blackfoot Milling Company. He arranged for the salary I would be paid. With regard to that lumber-yard, and during the time I was there, Mr. A. B. Hammond was not there continuously. He left for a considerable time. I don't know about the date he left, I cannot remember even approximately. I remember his going to Europe, but that was during the time I was at Helena. Afterwards, when I came back, I remember his stopping for a considerable time away from the State of Montana, in Oregon I understood. None of the lumber was shipped by me out the state or shipped by the Helena Lumber Company out of



(Testimony of Charles T. McCullach.)

the state from the Helena Lumber Company yard, to my knowledge. It was all sold for local uses. [162]

Q. Now, while you were an employee of D. H. Ross & Company, I understood you to say that you are not sure how the shipments from *from* Bonner were carried on the books, whether in the name of Henry Hammond, or W. H. Hammond, or the Blackfoot Milling and Manufacturing Company, or the Big Blackfoot Milling Company. Is that right?

A. I did not mean to convey the idea that I did not know at any time. I know, in the latter years that I was there, that it was all the Big Blackfoot Milling and Manufacturing Company. What I meant to say, and I think you will find that I did testify to it, was that I was not sure there was not an account with W. H. Hammond. That is the idea I meant to convey.

Q. There may have been one before that account was opened in the name of Henry Hammond?

A. It would be before, if at all.

(Witness Continuing:) When I was at Helena the accounts were then carried in the name of the Big Blackfoot Milling and Manufacturing Company; after the organization of the Big Blackfoot Milling Company, and after I came from Helena, all the accounts were carried in that name. I rather think it was either 1890 or 1891 that I went to Missoula and worked there in connection with this lumber-yard. I did not go from Helena, it was after my employment at Helena. With reference to the

(Testimony of Charles T. McCullach.)

sales of lumber from the Missoula yard, the lumber was sold for local use—it was a retail yard there and the lumber was all used in Montana, so far as I know.

Redirect Examination.

Mr. HALL.—Q. When was it that you learned of this supposed or alleged Henry Hammond lease that you spoke of, [163] was it during the existence of that lease, or after it ceased to exist?

A. Well, I learned of it in a general way during the existence of the lease in the matter of adjusting the profits. I closed the books every year during the time I was there, which would be approximately five or six times, and during that time it developed that Dan. Ross had no interest in the profits of the business of the yard.

(Witness Continuing:) These profits all went to the Bonner Mill—not directly to Henry Hammond. It developed that Henry Hammond was lessee of the Bonner Mill, and in that way the profits all went to Henry Hammond personally. At the time I turned the profits of the yard over to the Bonner Mill, I knew from Hathaway's statement to me as auditor of the company and adjusting the profits and losses of the business, that at that time Henry Hammond has a lease on the Bonner Mill. During the time I was at Missoula and at Helena, I was familiar with the market value in those yards of the sawed lumber that was being handled by them which came from the Bonner Mill. The price varied very much. We got into a fight there one time and the price ran down

(Testimony of Charles T. McCullach.)

pretty low. General prevailing market value, I think, was about \$16.00, perhaps, for common lumber per thousand feet, board measure. As to what was the reasonable market value of the lumber that came from the Bonner Mill at the town of Helena while I was there, my recollection is that we got \$23.00 a thousand foot for rough common lumber. I only quote from memory. I would not be positive as to that. I couldn't say that at that time I was familiar with the cost of sawing that lumber. I was not familiar with the cost of cutting and rafting logs from the places they were cut to the mill. [164]

Recross-examination.

The value I speak of is the retail market value. I say that sometimes it was higher and sometimes very low. We sold rough lumber there at one time as low as \$9.00 a foot at retail. I don't know of my personal knowledge about the stumpage value of the lumber during the years I was there. During the time that this lumber sold at \$9.00 a thousand, there was a fight on, or a lumber war on, between my company and other companies, and after the war ceased, the prices went up again.

**[Deposition of J. B. Seely, for Plaintiff.]**

The deposition of J. B. SEELY, a witness called and sworn on behalf of the plaintiff, was offered and read in evidence by the plaintiff, as follows:

Direct Examination.

I reside at Helena. By occupation I am a supervisor in the Forest Service of the United States. I

(Deposition of J. B. Seely.)

have resided in the State of Montana about twenty-eight years. My occupation during that time has been diversified—lumbering, a little farming, stock-raising, mercantile business, forest service. I was employed by the Hammonds in the Blackfoot River country. My work for them commenced the latter part of August or early in September in 1885. I was employed by George W. Hammond. I was at Spokane, Washington, when I was employed. The substance of my conversation with George W. Hammond when I was employed was this: He learned that I had some experience in lumbering in the East. And he met me in the Spokane Hotel; he told me that he was beginning some *some* lumbering operations in Montana and wanted me to go back with him. He did not at that time tell me whether these operations were being conducted for himself or for others; he never did at any time tell me in regard to who was managing and controlling these lumber operations. The first work [165] that I did for the Hammond outfit was at a point about six miles east of Missoula, at Bonner. At that time there was no mill there. They were then constructing a dam across the river. A man by the name of Cole had charge of that work. He seemed to be the man in the immediate supervision of the work. I don't recall that I ever saw A. B. Hammond about that work. After I had completed my work on the dam at Bonner, I went to work at a point up the Blackfoot River from Bonner, commencing operations or building camps on a little stream, a tributary of the Blackfoot, known as Fish



(Deposition of J. B. Seely.)

Creek. This camp was located on section 28, township 14 north, range 14 west. The first fall and winter we were engaged at Fish Creek camp, building camps and cutting timber, and the work incident to logging. I think it was in October, 1885, that we reached Fish Creek Camp and commenced work, and at that point and another point on the Blackfoot River it continued until February, 1889, and from there a short period of time at Bonner again, until about the first of August, 1889. This Fish Creek Camp was also known as Headquarters Camp for some time. During the time I was located at Headquarters Camp, I visited a camp that had been occupied by Eckwall, that was in the following season, and a man by the name of Cunningham had charge of it. I don't remember of meeting Eckwall, but I feel, in a general way, that such a man was operating there; it was commonly known in that vicinity as Eckwall's Camp before Cunningham went there. I could not say about what section the Eckwall-Cunningham Camp was located on. I know where the Harrington Camp was, and was there repeatedly. It was near the mouth of Elk Creek, I wouldn't name the section. It was a comparatively short distance down the river from the Fish Creek Camp. I could not name any of the sections [166] from which logging was done by Cunningham in the vicinity of the Eckwall-Cunningham Camp. I know there were logs taken from that camp and put into the Blackfoot River and they ultimately went to Bonner. There was no other mill at Bonner except the Ham-

(Deposition of J. B. Seely.)

mond Mill at that time. It would not have been practical to have floated or driven those logs, or in any other manner transport them to any other camp or sawmill than the sawmill at Bonner. I knew of the Sontag Ranch. I knew of the Hammonds logging timber cut from there and putting it into the river. I don't believe that the land lying on the east of the Sontag Ranch from the mill sloping to the west, was cut; the timber that I have in mind was adjacent, it might have included a part of the Sontag claim during the time that I have mentioned as being employed by those people. Perhaps I have in mind the timber that was cut by Boyd in there to the south and southeast of the Sontag ranch house, but that was after '89, I think, and I don't fix him with cutting in there with any certainty while I was there working. I went down the river one spring—probably it was the spring of '87. The drive was taken to Bonner and it was delivered at the Bonner Mill. After I went down the river with the drive, I remained in the employ of the Company on the Blackfoot continuously. Now, I have used the term company—we called the operations on the ground Henry Hammond's account, and during a considerable portion of the time that I have specified, I had charge, to some extent, of the books and the accounts, the log accounts was handled as the Henry Hammond log accounts for a couple of years, as I remember it, and then it was changed. After that it was called the W. H. Hammond account—the same man, as I recall it. I think the change was suggested to me

(Deposition of J. B. Seely.)

either by Henry Hammond [167] himself or George, I don't remember which. I remember when we opened up the books going back that we made the change. I don't think Mr. A. B. Hammond ever said anything to me about the accounts, or how they should be kept or entered. I don't think I ever had any conversation with Mr. A. B. Hammond in regard to the operations on the Blackfoot River during the years that I was there. I don't recall that I ever did see him about the workings or about the mill at Bonner—I don't think that I ever did. While I was employed as bookkeeper at the Headquarters Camp, I gave orders to the men that were employed about the camp for their work on the Missoula Mercantile Company. As to the method of signing those orders, for the first year and perhaps the second year, I am not sure about the second, they were signed Henry Hammond. I think later there was a change and they were signed W. H. Hammond, unless I made a mistake and forgot the name of W. H. and called it Henry. I don't recall at whose suggestion the signatures were changed, or the manner of signing those orders changed. George Hammond had charge of it; ordinarily he would be the man that would suggest it; if Henry Hammond had suggested it, why the change would have been made upon his suggestion. I don't think A. B. Hammond ever made that suggestion to me. A. B. Hammond did not at any time have any connection with the logging operations that were being conducted on the Blackfoot while I was there.

(Deposition of J. B. Seely.)

Q. To refresh your memory, Mr. Seely, do you remember of a conversation you had last winter with Mr. Ira Lantz, Special Agent of the General Land Office, at the Shepherd Hotel, Missoula, Montana?

A. Yes, sir. [168]

Q. Did you not in that conversation tell Mr. Lantz that it was at the suggestion of Mr. Hammond?

Mr. BURNETT.—Is this cross-examination?

Mr. HALL.—Yes, it is; and the record may show that.

Q. Didn't you tell Mr. Ira Lantz that the change in the signature of these orders on the Missoula Mercantile Company from Henry Hammond to W. H. Hammond was made at the suggestion of A. B. Hammond?

A. I did not, or if I did, it was not meant as A. B. Hammond.

Q. I ask you to examine the signature, J. B. Seely, at the bottom of the affidavit, which purports to have been subscribed and sworn to before E. E. Bennet, Special Agent of the General Land Office, on November 24, 1909, at Great Falls, Montana, and ask you if that is your signature. (Handing witness document.)

A. That is my signature.

(Witness Continuing:) I don't recall whether I swore to that affidavit or not.

Q. I ask you to read on the bottom, or listen while I read on the bottom of the second page, the following: "It was part of my duties as bookkeeper to draw and sign all checks in payment of wages and requis-



(Deposition of J. B. Seely.)

tions for supplies which were needed at or paid for from Headquarters Camp; the requisitions for supplies were all drawn on the Missoula Mercantile Company, and in sending the same, I signed the name of Henry or W. H. Hammond to them; the checks or orders for the payment of salaries were drawn on the Missoula Mercantile Company, [169] and in the beginning I signed them with the name of Henry Hammond, but on the suggestion of A. B. Hammond to me, I changed the form of the signature, and thereafter signed them W. H. Hammond." You have read that statement that I have just read, have you not?     A. Just now I have.

Q. It is incorporated in your affidavit made before Mr. Bennet on November 24, 1909?

A. The paper itself is the best record; I don't see any date.

Q. I will ask you to examine the jurat attached there by E. E. Bennet, Special Agent, of the General Land Office, which says, "Subscribed and sworn to before me this 24th day of November, 1909, at Great Falls, Montana." You saw that affidavit, did you not?     A. Yes, sir.

(Witness Continuing:) The only way I can reconcile the statements made in this affidavit before Mr. Bennet and my statements made on the witness-stand in regard to the change of the signatures on these orders on the Missoula Mercantile Company, is that I did not compare the affidavit as closely as I should have read it, because what was true then is true now, and as I have testified, I can-

(Deposition of J. B. Seely.)

not fix any time when A. B. Hammond did tell me to do that. And I now desire to testify that what I am stating before the notary at this time is true.

Q. Did not Mr. Lantz in his conversation with you last winter in the Shepherd Hotel in Missoula also ask you about the change in the signatures on the orders of the Missoula Mercantile Company, and whether or not Mr. A. B. [170] Hammond directed that the change be made?

A. My talk with Mr. Lantz at the Shepherd Hotel at Missoula, a considerable part of it, was without knowing who he was or what was his business; he recited things that occurred a long time before, and exactly what he stated I don't know now, but my reply was that it was a long time ago, and I didn't remember it, and then he told me who he was, what his business was, and I wouldn't undertake to say at this time what he said, or what I said in that conversation.

Q. In other words, you might have told him in that conversation the same thing that was made in this affidavit before Mr. Bennet? A. I might.

Q. Would it have made any difference—

A. I want to qualify that, if I did, I don't believe it was true.

Q. Would it have made any difference to you, Mr. Seely, if Mr. Lantz had disclosed who he was when you first commenced to talk to him?

A. Only this, that I would have been more careful in statements if I had thought of anything other than a discussion of old times in Montana.

(Deposition of J. B. Seely.)

(Witness Continuing:) I now want to be understood as saying that if I did make such statements in that affidavit to Mr. Bennet, and in my conversation with Mr. Lantz, in regard to the directions from A. B. Hammond, about the orders on the Missoula Mercantile Company, that such statements are not correct, and that the testimony I have given here this morning is correct. [171]

Cross-examination.

This affidavit, a portion of which has been read to me, was not written out by me in long hand, first of all, and I didn't write it out on the typewriter. The only talk or discussion of this matter that I had with anybody was with this gentleman here at Missoula, last January. This affidavit, as I recall it, was brought to my office at Great Falls, to my desk, and I think there is where I signed it. I had forgotten having made it even, until it was called to my attention just a few minutes ago. I don't remember having had another talk with somebody before my talk with Mr. Lantz last January, I think, in Missoula, even although this affidavit was made in November, 1909. When this affidavit was brought to me, I don't think I observed the difference in initials between A. B. Hammond and W. H. Hammond, in reference to the matter, or else I would not have signed it. I recall the Edgar claim. I was intimately acquainted with Mr. Edgar. I had known him before I went up there. The Fish Creek Camp was close to Mr. Edgar's claim, would judge around near 100 rods, might have been a little more than that or a little less.

(Deposition of J. B. Seely.)

(The witness was here made defendant's witness as to his testimony concerning the Edgar claim, improvements and cultivation thereof.)

In October, 1885, when I was there there may or may not have been improvements when we arrived there, but there was shortly afterwards. Before Christmas, 1885, there were improvements there—there were buildings consisting of a log house or cabin or camp, and a stable or barn of logs. I didn't have any occasion to visit Henry F. Edgar on that claim during the years '85 and '86. I don't recall having visited him. I think in the spring and early summer of '86, there was some cultivation around the Edgar cabin; I think there was a sort of garden there, little cultivation in the nature of a garden, as I recall it. At [172] a later date up there, say in '87 and '88, I do not recall the condition of the improvements on the Edgar claim. I recall the character of the land in the Edgar claim as viewed from the standpoint of a farmer. I think it was very fair agricultural land, that is, the soil was good as to its character and moisture, particularly where his buildings were located.

Q. Could you describe the topography, where his buildings were situated and the rest of the claim?

A. I could describe the topography of the land where his buildings were, but whether it would be entirely within the boundary lines of his claim, I wouldn't undertake to say. The land there consisted of benches; there is a flat tract of land from the Blackfoot River, and a bench rising on another flat.



(Deposition of J. B. Seely.)

plateau or level tract of land, and then another somewhat abrupt rise, sort of a terrace, and Edgar was on this second bench, as I remember it, and a little stream we called Little Fish Creek.

I have had considerable experience in farming, some of it in Montana, and from my experience as a farmer, I would say that the Edgar claim was susceptible of making a home. I was around about the Edgar claim when I was working for the people that maintained the mill at Bonner nearly four years, and for a number of years afterwards. During that period of four years from October, 1885, I had that familiarity with the claim of Mr. Edgar that a man would acquire by passing over it frequently, without extensive examination of it. I do not recall during that period as to the character of cultivation on the claim. I think Edgar had some horses and I think a few head of cattle, milk cows. I know of my own [173] knowledge of camps that I worked at after October, 1885, along the Blackfoot River that were supplied with vegetables. In a general way I know where most of them came from, they were purchased of the settlers on the river, a German up above named Sontag; bought some of him, and Warner's. I would not say whether we did or did not buy vegetables that came from Mr. Edgar's claim. I think there were vegetables raised on that Edgar claim after October, 1885, while I was there during the next two or three years, but it is only an impression, sort of a hazy recollection. Mr. and Mrs. Edgar, and Mr. Edgar's stepson, a man named

(Deposition of J. B. Seely.)

Foster, were the occupants of the Edgar claim from October, 1885, I think for the next three years or so. As to the period of time that I recall seeing them on that claim, I think he was there continuously from about the time we went there in '85, I would think three years, for quite a period of time anyhow, I remember his being there or understood he lived there. As to the extent the timber had been felled on the *Eddy* claim when we first arrived in its vicinity in October, 1885, I do not know; but Mr. Edgar was logging there, cutting timber there to some extent that winter. As to whether timber was being cut on the Edgar claim during the summer of '86, there were logs skidded on the ground, on the claim, in the summer of '86. That recalls to me what I overlooked before. There was a period from the spring of 1886 to perhaps three or four months when I was not in the employ of the Company.

#### Redirect Examination.

I think Mr. Edgar was doing the logging off the Edgar claim. The method of his logging showed inexperience, but I did not question then, and don't now, but that he was cutting this into timber for merchantable timber. I [174] never heard any statement made by W. H. Hammond or Henry Hammond in regard to what interest he had in the Edgar claim. I don't know that I ever heard any statement by George Hammond as to the interest that the Hammond outfit had in the logs on the Edgar claim, but I knew in a general way that they were going to the Bonner Mill, that is, going to the river; that is, all

(Deposition of J. B. Seely.)

the logs that came off of there. I don't remember this man Bennet. I don't recall where or when I met him. The signature to the affidavit is mine, and his name is subscribed to it there. I don't place the man now, I don't recall him, only I do know that a man came in there to my office and asked me to make an affidavit; I looked that over and I have no doubt but what that was Mr. Bennet at that time. I don't think he could have prepared an affidavit without having talked to me; but all that I can recall now is that he just came in and presented this affidavit, and asked me to sign it. I had forgotten it, until I saw it here, that it had ever been made.

Q. Does not that seem a little peculiar to you, that a man would present an affidavit without having talked to you?

A. I don't think that he could, or he would, and I presume that he did first talk with me; or else I wouldn't have made the affidavit if it had been brought up to me in some way so that I didn't question it. My signature is evidence that I did not question it at the time I signed it.

Recross-examination.

Q. You have stated that you didn't have any doubt then, or don't have any doubt now, that Mr. Edgar was taking the timber off of his claim for the sake of timber, or something like that? [175]

A. Yes, sir.

Q. Now, would the claim have shown any different manner of having the timber taken off of it if Mr.

(Deposition of J. B. Seely.)

Edgar had in view the clearing of his claim for farming or pasturing purposes?

A. The operation would have been practically the same.

[**Deposition of Thomas G. Hathaway, for Plaintiff.**]

The deposition of THOMAS G. HATHAWAY, a witness called and sworn on behalf of the plaintiff, was offered and read in evidence by the plaintiff, as follows:

Direct Examination.

I reside at Missoula, Montana, and am sixty-seven years past. I have no occupation. I came here in 1878. For the first three years after I came here, I was bookkeeper for Eddy-Hammond & Company.

Q. Was the Eddy-Hammond Company, the firm of Eddy-Hammond & Company, a copartnership or a corporation?

A. I think—I don't know—there was stock issued, I think it was a copartnership—because I never knew of any stock being issued; I remember A. B. Hammond and R. A. Eddy and E. L. Bonner—however, E. L. Bonner owned the half—about the time I came, and R. A. Eddy about a third and that would make a sixth for A. B. Hammond.

(Witness Continuing:) I worked for Eddy-Hammond & Company from 1878 until 1882. The copartnership was in existence when I first commenced to work for them in 1878. As to who was in the active *and* control of the firm of Eddy-Hammond & Company during the period from 1878 until 1882, A. B. Hammond was there most of the time, R. A. Eddy at



(Deposition of Thomas G. Hathaway.)

that time was away—when I first came here—when I first came here E. L. Bonner resided in [176] Deer Lodge. I kept the books of Eddy-Hammond & Company; at that time it was an awful small outfit. There were only two clerks of us. I worked in the store in the daytime, and at night-time I used to post the books; and business then didn't amount to much, only where they used to have our rush, which was Sundays, that was the great day, they come in from church, something like that, and I slept in the store, and so did the other fellow—there was two of us.

Q. Who gave you your directions and orders about your work in the store and on the books?

A. Well, A. B. Hammond was there, and he was the boss at that time.

Q. How long did Mr. Hammond continue to be in the active management of the firm of Eddy-Hammond & Company?

A. Well, it was like this, when he was there he had charge of the store, as I said, and Eddy, when I first came, was away in California, and when Eddy come back, why, Hammond knew more about the business than anybody else, except perhaps myself, and when I kept the books, you know, I was cognizant of all that was going on, and who owed, and everything. There used to come a man from Deer Lodge, by the name of Robinson, to check us up, look over all accounts, sent by Mr. E. L. Bonner, who was the biggest stockholder.

(Witness Continuing:) As to when the firm of Eddy-Hammond & Company commenced to engage

(Deposition of Thomas G. Hathaway.)

in lumbering in the State of Montana, it might have been 1881. Now, I think it is 1881, or 1882, I think they then had the first notice that the Northern Pacific expected to build through this country, and Mr. Bonner had got from the Northern Pacific a railroad contract for cutting square [177] timbers, getting out piling and ties, and cutting bridge material, and there was mills put in to get that; one was put up here at a place called Wallace, and it was then Clinton afterwards, by a man named Joseph Kitchen; there was another put in afterwards, I cannot give you exactly the time, this was thirty-odd years ago, and there was another put in by a man named Stephens—I think his name was Stephens—down to what is right below Thompson Falls, afterwards bought by a man named Allen, and these mills they cut timber for the construction of the Northern Pacific. They all cut timber and guard rails, and bridge ties, and stuff like that. I knew of a mill that was situated near what is now the town of Bonita, Montana, that was called the Fenwick Mill. That mill was established or set near Bonita somewhere about '85. I don't know the man's name that built the mill at Bonita, but the man that looked after it, who was in charge, was E. A. Eddy.

Q. My question may be a little leading. What firm or what company owned the mill at that time, and paid for its erection?

A. The mill was run by F. A. Hammond who owned the mill. The mill originally belonged to a man named Allen; he bought it from this man Stephens,

(Deposition of Thomas G. Hathaway.)

I think then it was moved, Wilcox and Stephens, then the mill was moved from near Thompson Falls and erected. I know that Mr. Eddy was up there and looking after the erection of the mill.

Q. Do you know whether or not he did that for Mr. Fred Hammond, or for the firm of Eddy-Hammond & Company?

A. All I know—he done that for the firm—I don't know, that was my understanding of it, and the mill was sold [178] to F. A. Hammond by Eddy-Hammond & Company.

(Witness Continuing:) I think Fred A. Hammond continued to run that Bonita Mill something over a year and then he sold out to George W. Fenwick. George W. Fenwick was a brother-in-law of Mr. Henry Hammond; he married Mr. Henry Hammond's sister; he was a brother-in-law of A. B. Hammond. I was going to say Mr. Fenwick was up there, had been looking after the lumber and knew the situation better than anybody else. He knew what was required and he was an educated man. Mr. Fenwick run the Bonita Mill, it must have been fully three years, or perhaps more. When Mr. Fenwick ceased to operate the mill, it was discontinued as a mill. I think some of the old machinery is there yet. I know of nobody operating there in that particular vicinity but there was about ten or twelve mills right near around there, but not in that spot.

Q. What connection or relation did Mr. A. B. Hammond have with the mill during the time that it was run by Mr. Fred A. Hammond?

(Deposition of Thomas G. Hathaway.)

A. Well, at the time Fred A. Hammond run the mill he had a contract from us, and we handled his lumber.

Q. That is for the firm of Eddy-Hammond & Company?     A. No, sir.

Q. For the Montana Improvement Company?

A. For the Montana Improvement Company.

(Witness Continuing:) The Montana Improvement Company was a corporation; I don't remember who all the stockholders of that company were, but I know some of them; there was E. L. Bonner and R. A. Eddy and A. B. Hammond, and I also had a little stock; [179] I was an officer, they had to give me stock to be connected with the company. The records of the State of Montana show that the Montana Improvement Company was incorporated August 1, 1882. The railroad had not got through, but then we had furnished all the material for the railroad, and we had all this side lumber to dispose of. The firm of Eddy-Hammond & Company was engaged mostly in a general mercantile business in the town of Missoula. The Montana Improvement Company was a separate and distinct entity from Eddy-Hammond & Company. It was a corporation. As to the purpose for which the Montana Improvement Company was incorporated, Eddy-Hammond & Company, after the railroad contract was accomplished, had all this side lumber on hand and incorporated this company to handle that side lumber and to do that, we had to get another way to contract with, and we went into the business; it was a helper



(Deposition of Thomas G. Hathaway.)

really to Eddy-Hammond & Company to have that company. As to its being a subsidiary or co-ordinate company with Eddy-Hammond & Company, it was entirely distinct at the time. By their being stockholders in both, I suppose they had the benefit of the particular trade for that company.

Q. Could you say that the Montana Improvement Company handled all of the lumber that was cut by Fred A. Hammond and by George W. Fenwick at the Bonita Mill?

A. Well, I don't know about George W. Fenwick now, because we went out of existence before George W. Fenwick—

Q. Came into existence?

A. No, sir, pretty near the same time, I think. I cannot tell the date, you know, it is a long time ago, I cannot remember. [180]

(Witness Continuing:) The Montana Improvement Company handled a portion of the lumber that was cut at the Bonita Mill by Fred A. Hammond, at least I think we did, because I know at that time—let me see, that was in '85,—'86, I think the Government got after us, and we had an inkling of it in '85, because those fellows all the time were quizzing me. As to whether there was a written contract between Fred A. Hammond and Montana Improvement Company for the handling of the lumber from the Bonita Mill, that I cannot say, but I think there was because I know that we afterwards—we always did make contracts for the mills. As to the substance of the contract between Fred A. Hammond and the Mon-

(Deposition of Thomas G. Hathaway.)

tana Improvement Company for the handling of the product of the Bonita Mills, then owned by Fred A. Hammond, I don't know whether it was—I don't recollect about the contract, but I can tell you this; I was on the road selling this lumber; I wasn't here but very little of the time, in fact, when that company was started it was my duty to go out and unload that lumber, and to do so, we had to establish lumber yards, and it took me a great deal of time; they were at different places, and I had to order such stock as I thought was necessary to stock up with for that particular yard, and we started yards in different sections of the country. I wasn't here very much, in fact, I was away most of the time, but I know this, that we bought lumber just as cheap as we could manufacture, so I feel nobody made a contract.

Q. Now, do you know of your own knowledge whether or not the product of the Fred Hammond Mill at Bonita was turned over to you during those years, to the Montana Improvement [181] Company?

A. Some of it, yes, there must have been, because it was in existence then, and we handled the lumber, how much I cannot say.

Q. And during those years that the Montana Improvement Company was receiving lumber from the Fred Hammond Mill, who was in charge and in active control of the business of the Montana Improvement Company?      A. You mean the officers?

Q. Officers, yes.

(Deposition of Thomas G. Hathaway.)

A. E. L. Bonner was the president of the company, R. A. Eddy was vice-president and A. B. Hammond was general manager, I think, I was assistant manager.

Q. Well, what was Mr. A. B. Hammond's duty in regard to the management of the Montana Improvement Company?

A. His duties, like that of any other manager.

Q. Was he, or was he not, in personal charge and supervision of the business of the Montana Improvement Company?

A. Well, no, sir, he was not, that is to say, personally there?

Q. Yes.

A. I knew more about the business than anybody, in fact, I took the inventory and handled the stock and he sent me out to sell it; I would go out and sell it and send the orders in and the orders came in, the office was right there, and he was here in town. The Mercantile Company was doing a big business and he used to attend to it a part of the time. He would certainly look after it a part of the time, I suppose, but the contracts they would take care of themselves.

Q. That is, he looked after the business of the Montana [182] Improvement Company part of the time?

A. He had an independent bookkeeper.

Q. From whom did you receive your orders?

A. I looked to him.

Q. To A. B. Hammond?

A. That is, for the orders of the business I con-

(Deposition of Thomas G. Hathaway.)

sulted with him; he was my manager, I was assistant.

(Witness Continuing:) As to whether or not A. B. Hammond had any personal interest in the mill at Bonita during the time it was under the management and control of Fred A. Hammond, I don't think he had, because Fred A. Hammond sold his interest to George W. Fenwick—sold out—I know that myself, because I took the inventory of the stock. I don't think A. B. Hammond had any interest in that mill after George W. Fenwick bought it of Fred A. Hammond. We handled the product of the mill after Fenwick purchased it of Fred A. Hammond; that is, I don't know whether it was after the time the Montana Improvement Company was in existence, the dates were very close there—I think it was the Big Blackfoot Milling and Manufacturing Company that handled the biggest part of the output of that mill.

Q. Now, to refresh your memory a little; the records of the State of Montana show that the name of this corporation was the Blackfoot Milling and Manufacturing Company?     A. Yes, sir.

Q. And it was organized on January 22, 1888?

A. Yes, sir.

Q. Then evidently the Montana Improvement Company continued from August 1, 1882 to January 26, 1888?

A. Well, we stopped, the Government was after us, [183] we stopped.

Q. When did the Montana Improvement Company



(Deposition of Thomas G. Hathaway.)

then cease to handle any of the products of the Fenwick Mill?

A. Well, after we knew that they were suing us, we couldn't continue that kind of business, we stopped—I think the date would show that the suits were brought. I can't say exactly; I went to work in 1887 and contracted and worked separately on this Bitter Root road myself. I built ten miles of that Bitter Root road.

Q. And your relations with the Montana Improvement Company ceased in 1887?

A. I never got any wages from them. I went out on that road and I worked. I had a contract. It would show on the records.

Q. After the Montana Improvement Company commenced to handle the product of the Fenwick Mill, how long did the Fenwick Mill continue in existence?

A. I cannot tell exactly. We had an awful long period of dull times; lumber was low and the prices had gone down, you know, and there was not much, very much, doing at it.

Q. Did the Fenwick Mill cease to operate about the time suits were started against the Montana Improvement Company?

A. They run after that; that was an independent mill.

Q. Can you tell how long Fenwick continued to operate that mill on section 14, near Bonita?

A. I cannot say positively; let me see. I cannot tell; I have forgotten the date.

(Deposition of Thomas G. Hathaway.)

Q. Did the Montana Improvement Company, or Eddy-Hammond & Company, or the Missoula Mercantile Company, or any [184] company, firm or corporation with which A. B. Hammond was connected continue to receive the product from the Fred Hammond Mill at Bonita up until the time it ceased to operate?

A. We took the product of the mill, that is, one of the companies I was connected with.

(Witness Continuing:) As to all of these companies that I was connected with, A. B. Hammond was also connected as a stockholder, or otherwise, I am familiar with the mill known as the Bonner Mill, at the town of Bonner, Montana. I think that mill was started to be built in 1885 by W. H. Hammond. I don't believe that A. B. Hammond had any interest in the Bonner Mill at the time it was erected from the fact that Henry Hammond had bought the site there from a man named Hiram Farr, and he erected the mill. Henry Hammond was a man of means at that time. As to whether he borrowed any money from A. B. Hammond to use in the construction of that mill, or from any of the corporations, firms or copartnerships with which A. B. Hammond was then associated, I cannot say. The accounts were not under my supervision. I know this, that Henry Hammond was a contractor at the time. He had a subcontract from Eddy-Hammond to clear a right of way and do other work down here on this Northern Pacific when it was being built, and he made considerable money, and he brought into the country.

(Deposition of Thomas G. Hathaway.)

considerable money—he was a contractor on the Coast. How much money he had, I cannot say, but I do know that he built the mill. He can tell you himself, he is here present. I cannot say, I didn't keep the books of the Mercantile Company. As to how long Henry Hammond continued to own and operate the Bonner Mill on the Farr Mill Site, Henry Hammond started to build the mill in 1885, to my memory, the [185] next year part of the dam went out and retarded the operation; they couldn't hold the logs without they had a dam in there and they didn't do very much; they had to replace that dam, and I don't think he done very much the next year—that was the year 1886, and then after the mill was built, as my memory is, he sold his mill to what was called the Big Blackfoot Milling and Manufacturing Company, took a lease. The lease, I don't know if it is recorded or not; he is here, he can tell you, I don't know about that. Then he operated the mill, and whatever he could make out of the mill was his, over and above what he paid for the lease, and his lease, I forget exactly, I think he had only a short lease, two years or something, and then afterwards the new company was taken over, the Big Blackfoot Milling Company, when his lease expired.

Q. I believe the correct name of that first corporation was the Big Blackfoot Milling and Manufacturing Company?

A. Yes. You spoke to me the other night about the Big Blackfoot Mill Company, I don't know any-

(Deposition of Thomas G. Hathaway.)

thing about that.

Q. It was never a corporation that was mixed up in any of these lumber operations that we know of?

A. No, sir, not a thing.

Q. Now, then, after the lease to Henry Hammond expired, how long did the Blackfoot Milling and Manufacturing Company operate the Bonner Mill?

A. Let me see—that would be—he had a lease starting in '85; I don't know whether the lease was signed or not, I don't know whether the new company—I think I can tell—just about that time the new company was formed, anyway about the time his lease expired, I wouldn't say positively. [186]

(Witness Continuing:) The company took over the Bonner Mill and ran it. I think Henry Hammond was president of the new company, but I am not sure. He was manager anyway. As to whether the mill was operated by the corporation itself or by Henry Hammond under a lease, first Henry Hammond had it under a lease, whatever profit he made was his; afterward when it was taken over, Henry Hammond had the management of it, and I worked under him, he and I run the mill; that is, he manufactured lumber and he had me sell it; I sold it or tried to sell it. A. B. Hammond was connected as a stockholder with the Blackfoot Milling and Manufacturing Company during the time Henry Hammond was in active management of the manufacturing end; E. L. Bonner was a stockholder; there was four stockholders about equal; there was Henry Hammond, R. A. Eddy, E. L. Bonner and A. B. Ham-



(Deposition of Thomas G. Hathaway.)

mond, and about that time I made a little money on this contract in the Bitter Root, and I put what little money I had in the stock. They had given me some stock; I think McLeod had some; there were some others, but the principal stockholders were A. B. Hammond, R. A. Eddy, W. H. Hammond and E. L. Bonner. W. H. Hammond and Henry Hammond is the same thing. From my memory, Henry Hammond disposed of the product of the Bonner Mill during the time he managed it. There is one thing I want to say here about what I gave in testimony there—I find this—about the time that the Government got after us and about the time, it was in '86, these mills, I made a statement that I want to correct there. They made their contracts for their mining timbers direct with the mines. They were cutting some timber on unsurveyed lands; the lands of this country were not surveyed and Mr. Fenwick, I know myself, had a contract direct with the Anaconda Company; [187] now that is of record and can be shown. I don't know where that contract is because I have not seen it. Mr. Henry Hammond called my attention to this since we adjourned from the other room into this one—I had forgotten about it. But it is a fact, I remember distinctly about it now, but it has been so long ago that a person cannot remember everything.

Q. Let us go back to the Blackfoot Milling and Manufacturing Company. After the company itself took charge and commenced to operate the mill at Bonner, how was the product of that mill disposed

(Deposition of Thomas G. Hathaway.)

of? A. After the—

Q. After Henry Hammond's lease expired and the company itself took charge of the Bonner Mill?

A. Oh, we sold that, I went out and sold the lumber.

(Witness Continuing:) When I say "we," I mean Henry Hammond and I. I would consult with him about the prices; the prices were low, and it was a pretty hard uphill job, because this country, after the railroad was completed, we had to compete with a whole lot of little mills that went up and they had nice little settings around the track, and our company was paying a stumpage for the lumber that they got off of the railroad land; the only thing that allowed us to compete was our location being near the market.

Q. Who received the profit, if any?

A. Oh, the company, they owned the mill, and they received the profits.

Q. That is, the Blackfoot Milling and Manufacturing Company?

A. The Blackfoot Milling Company was the last one. [188]

Q. That was the last one, the last Company?

A. Yes, sir.

Q. I call your attention, to refresh your memory, to the records of the State of Montana, which show that the Big Blackfoot Milling Company was organized on November 14, 1891. Now—(interruption).

A. Henry Hammond's lease run, I think, it was two years, with the privilege of one; I don't know

(Deposition of Thomas G. Hathaway.)

exactly how long he had it. The mill was started to be built in 1885.

(Witness Continuing:) It would seem as though there was a short period between the time that the Henry Hammond lease ceased to exist and the organization of the Big Blackfoot Milling Company in 1891, when the mill was run and operated by the Blackfoot Milling and Manufacturing Company. It seems to me that after the formation of the Big Blackfoot Milling Company, on November 14, 1891, there was a change in the officers; I think McLeod was president, or something, I am not sure; there was not the same officers; I don't believe. A. B. Hammond had an interest in the Big Blackfoot Milling Company. He was always an active stockholder, and he would certainly have some say with the management or directing the officers of the company after its organization in 1891, but he was not the manager at that time.

Q. Do you know of any contract between Henry Hammond on one side and A. B. Hammond, or any of the corporations or partnerships with which A. B. Hammond was in control?

A. He was not in control.

Q. Or in which he had an interest, by which A. B. Hammond, or any of the corporations or copartnerships in which he was interested received any of the profit that was derived [189] from the operations of the Bonner Mill during the time that it was under lease by Henry Hammond?

A. Henry Hammond, my understanding was that

(Deposition of Thomas G. Hathaway.)

all he made over the amount he paid for the lease was his; that the amount he paid for his lease went to the stockholders of the Big Blackfoot Milling and Manufacturing Company.

Q. Did the amount that went to the stockholders of the Blackfoot Milling and Manufacturing Company from the lease given to Henry Hammond depend upon the amount of timber that was sawed by Henry Hammond at the Bonner Mill, or was the rate a flat fixed rental?

A. My recollection of it is, it was a flat rental. He paid so much a year, how much I cannot say.

Q. And that amount was not dependent in anywise upon the amount of timber that was cut or sawed by Henry Hammond?

A. He took his chances when he paid his rent.

Q. Now, do you know whether or not A. B. Hammond derived any profit or participated in any profits that Henry Hammond made from the mill during the time that he had it under his lease?

A. I don't believe he did. I don't know anything about it; anyway, it would be a matter between him and Henry Hammond.

(Witness Continuing:) As to when I severed my connection with the Big Blackfoot Milling Company, we sold out to the Anaconda Company, I think, in July. I was taking stock in 1898, about the first of August, but the understanding was that we would stay for a time there and post the incoming men about the business, and [190] in October I became dissatisfied with the new management and I



(Deposition of Thomas G. Hathaway.)

asked a leave, and I guess likely they were willing for me to leave. They sent a man with me and I went over the country. I tried to tell all I knew about the different charges. We had different charges and different prices, and I showed him what he had to go up against. They sent a man by the name of Griffin. I left the company in 1898. Henry Hammond stayed on and continued there. As to the yards I have testified to and their first establishment, when the railroad got through, we found it necessary to handle the lumber, to place it on the market. Where it would be advisable to start a yard, we started one. We started one in Missoula, one in Helena, one in Deer Lodge, one in Spokane, one in Cheney. In Brockton, we interested a man, that is, carried him; he got paid for it.

Q. How were the accounts between the various yards that you have mentioned, and the parent company carried?

A. Well, at first we kept a set of books there and charged them up with the lumber that we shipped them. I was on the road selling, not only to our yards but to little towns where it was not worth to establish yards, would not warrant it.

Q. Were the consignments of lumber charged to any particular individual who might happen to be in charge of the local yards?

A. No. It was charged up to the yard, to the Helena Lumber Company, the Deer Lodge yard, or the Missoula yard; I don't know whether the Mis-

(Deposition of Thomas G. Hathaway.)

soula yard had been established at that time, though I think it was.

Q. It was merely carried as a branch of the parent company and not as a distinct corporation or firm or individual? [191]

A. The Helena yard was run by—Mr. Bonner had a relative named Edgar and he with a practical man by the name of Hartwell—Hartwell and Edgar was the name of that company; we sold to them direct; the Deer Lodge yard was Bonner's own yard; that was ordered by him direct and charged to him direct; the Missoula yard, I think, was started by a man by the name of Rutherford. I don't know whether they had it there or not, I can't exactly recall, but Rutherford, I think Clements, if you will let me, I can ask Henry Hammond, he perhaps could refresh my memory.

Q. No, you can answer it.

A. Wilcox was one of the men that run the Cheney yard, and he run it, it was just the same like selling to themselves, like he was to do the business, do all the business he could and that applied to the Spokane yard.

Q. Now, you have mentioned the fact that Fenwick had a contract direct with some of the mills or mines at Anaconda for furnishing them lumber?

A. Now, here, Mr. Fenwick had his contract direct, he billed direct to these yards. My understanding of that there was on unsurveyed lands and the company couldn't handle it, and that is the way it was run there up the Bitter Root, though those

(Deposition of Thomas G. Hathaway.)

people only handled through our company because it was land that they had title to.

Q. Did the Blackfoot Milling and Manufacturing Company and the Blackfoot Milling Company handle all the lumber that was cut up in the Big Blackfoot country?

A. The Blackfoot Milling and Manufacturing Company?

Q. Yes, and the Blackfoot Milling Company?

A. Henry Hammond had his billed direct to him, from memory [192] after we got charge of it, it was ours.

Q. Now, did you ever see any of those contracts between Fenwick and the mines in Butte?

A. I knew of them being in existence, possibly may have seen them. I tell you, I was on the road most all the time. My business was such that, although I lived here and had a family here, I was on the road seeking an outlet for this lumber.

(Witness Continuing:) I knew that those contracts between Fenwick and the mines were in existence. As to the stock book, the minute-book, the general books of accounts and contracts of the Montana Improvement Company, as I said before I was the traveling man, assistant manager, but I was traveling and away, and I didn't keep the books. The last I saw of them was in the office of the Montana Improvement Company. That office was located in a portion of what is now the Missoula Mercantile Company's office. The last time I saw the books, they were in charge of a man by the name of E. A. Winstanley.

(Deposition of Thomas G. Hathaway.)

I think he was the man who kept the books. Winstanley is dead. He is a man that is well known here. The last time I knew anything about the books, I think Winstanley was in charge of them. The last time I knew anything about the books, E. L. Bonner was president and A. B. Hammond was general manager, and I was assistant manager. The last I ever saw of them they were in the place of business now occupied by the Missoula Mercantile Company.

Q. And who was in charge of the books of the Missoula Mercantile Company at that time?

A. Well, the Missoula Mercantile Company was; [193] Mr. C. H. McLeod was in charge of the Missoula Mercantile Company because A. B. Hammond was away a good deal, not at that time—I think—or A. B. Hammond you might say was the—and McLeod was his assistant manager, that was in about '86 or '87, along there. A. B. Hammond, then, I suppose was the manager really, the head man of the Missoula Mercantile Company's management.

Q. How long did C. H. McLeod continue in charge of the office of the Missoula Mercantile Company?

A. McLeod was virtually in charge of the company for many years; A. B., after '88 or '89, left and was away on the coast, you know.

(Witness Continuing:) I do not know what became of the books of the Blackfoot Milling and Manufacturing Company and the Big Blackfoot Milling Company. I didn't have anything to do with these books. I was on the outside, but I seen them, and



(Deposition of Thomas G. Hathaway.)

when we sold out to Daly, and we took our inventory, you know, I worked for them a couple of months afterwards and Henry Hammond had the Blackfoot Company's books up there at his mill, you see. I don't think the old books of the Blackfoot Milling and Manufacturing Company were kept at Bonner. I think they were kept down here in the office of the Missoula Mercantile Company. That is my recollection. The last time I knew anything of them, Winstanley and a nephew of mine, who is now living in Seattle, had charge of them. George W. Fenwick is still alive and lives at Eureka, California, the last I knew of him. Fred A. Hammond is dead. George H. Hammond is dead. The Montana Improvement Company finally went out of existence when the Government got after us. I don't know whether we maintained a nominal existence [194] up until 1897; I don't think so; they never done any business to speak of after the Government got after us.

Q. I find from an examination of the records of the County Recorder of Missoula County, Montana, that on September 18, 1897, you as one of the trustees signed an annual statement to the Montana Improvement Company, showing that the capital stock was fully paid up, \$2,000,000.00, there were no existing debts, on September 18, 1897, and to which you made an affidavit before George R. Ogden, a notary public, as president of the company. Do you remember making those annual statements?

A. Well, if it is of record, I must have made them,

(Deposition of Thomas G. Hathaway.)

but we didn't do any business, you see, the Government got after us and we closed out our business, and incorporated into another company.

Q. Was the property of the Montana Improvement Company and its assets transferred to the Blackfoot Milling and Manufacturing Company?

A. I think that after we got through paying all those law bills, there wasn't so very much, I don't know; I don't remember about that.

Q. Well, this may be leading, but with the gentleman's objection, I will ask you, is it or is it not a fact that the transition from the Montana Improvement Company to the Blackfoot Milling and Manufacturing Company was in fact merely a change in name of the same corporation?

A. I don't quite understand your question. What are you trying to get at?

Q. I am trying to get at this, that in effect and in fact the same people who controlled the Montana Improvement [195] Company merely organized a new company to carry on the same business, in the same way, and it was not a distinct corporation composed of different stockholders and transacting a different and distinct business from the transacted by the Montana Improvement Company?

A. They was not the same stockholders; I know they were some of the stockholders; the Montana Improvement Company had stockholders that wasn't in the other company.

Q. Wasn't it in effect a continuation of the old business under a new corporation?

(Deposition of Thomas G. Hathaway.)

A. There was certainly some of the same stockholders in the new company.

Q. And didn't they carry on the same general line of business as the old company?

A. Yes, they carried on the lumber business.

(Witness Continuing:) I was familiar with the kind of lumber that was being cut at Bonita Mill, from the time that it was established in 1885 up until it ceased to be operated by George W. Fenwick, and I was familiar with the market value of such lumber in that vicinity during that time.

Q. What was the fair market value of the lumber that was being cut at the Bonita Mill during the time it was operated by Fred A. Hammond and during the time it was operated by George W. Fenwick?

A. You want to know about the price?

Q. Yes, about the price.

A. During the railroad construction—I will have to get ahead to show you through here, the price was pretty high. The price paid by the railroad to Eddy-Hammond & Company for the bridge timbers was about \$14.00 per thousand, board feet. After [196] the railroad was completed, all the people engaged in the railroad construction left the country and things flattened out here and prices went down; the prices at first after the railroad was completed got to about \$7.50, and \$8.00 a thousand was a fair price at that time for common lumber. Our people who were engaged in lumbering in this country at that time had not any facilities to work up their uppers; they come in here in great numbers because

(Deposition of Thomas G. Hathaway.)

the country was unsurveyed; they got settings all along the line; they cut lumber pretty cheap; stumpage cost them nothing and there was an over-supply, and prices went down, and at about the time Fenwick started it fell to \$6.00 and \$7.00 a thousand; that was a fair price to be gotten at that mill and the mines bought lumber, we had contracts even where men paid stumpage in the Bitter Root Valley, and I bought lumber as low as \$5.50 f. o. b. cars direct from the mill.

Q. Were you familiar with the fair market value of lumber that was cut by the Bonner Mill during the time it was operated by Henry Hammond under a lease?

A. The prices at that time, as I said before, just after the construction, was a little better; they got about \$7.50, or \$8.00 for common lumber, and then they installed machinery there; worked up their uppers, sold flooring and got a fair price for it; then Henry Hammond made a little money, but the prices kept going down, so many new mills going in.

(Witness Continuing:) \$5.50 is the lowest I bought at, although I have known lumber that was sold cheaper, but the contract was \$5.50, I know that for a fact. This was for mining timbers. The price that I have given, it was all the way in lengths from 12 to 20 feet— [197] ordinary length. There was no variations in the price as to the length of the timber, unless it got too long length; the length required for mining timbers was 16 ft. They liked that the best, although they could use any length.



(Deposition of Thomas G. Hathaway.)

The timbers are not cut as short as 10 ft., unless it is defective, but 12 to 20 ft. was the ordinary length, the same price.

#### Cross-examination.

As to the market price of lumber from November, 1891, when the Big Blackfoot Milling Company was incorporated, until, say, January 1, 1895, common lumber was sold in the lumber-yards around Missoula at \$10.00 a thousand; it cost to bring it at least \$1.00 to \$1.50 to receive it there, and so much for piling it, and then you have to deliver it, and lumber at that time was very low; on the country along the track, there were lots of sawmills in them days; they was looking out for trade, and competition was strong, and the price of lumber was low; there was no money made those times and wages was down; that was the only thing that helped us out. Conditions in 1893 and 1894 were such that we didn't make any money on our lumber then. A great many of the sawmills that had contracted with us and was sawing independent, went broke at that time. After Uncle Sam got after them for cutting on the unsurveyed lands, the mills that went in and had to pay stumpage couldn't make a bean, couldn't make a dollar, and the lumber business was demoralized, and it was awful hard times to this country. There was not much substantial betterment of conditions before January, 1895. There was hard times here; the lumber business was in bad shape, and the supply exceeded the demand, and it was hard to unload; the country at

(Deposition of Thomas G. Hathaway.)

that time was in a bad state; the prices were low; in fact, I have known of lumber to sell as low as \$4.00 a thousand, that [198] is, remnants in some of these yards; one man named Perry Steffin, who was down below here, offered me the lumber in his yard at \$4.00 a thousand; that must have been about '93 or '94, I should judge. I was going to say this: a great deal in the price of lumber depended upon the location of the mill; for instance, you take a mill up in that canyon where the freight rate into Butte was low; they got a better price from that mill. They would get a 9¢ rate as against a 12¢ or 14¢ rate here; lumber weighs about 4 lbs. to the foot; up in the canyon the rate was as low as 8¢; there was a dollar, they had the better in the freight rate; lumber up there brought a better price than it did in this locality. I was going to say that fir timber, as a rule, commands a little better price for mining purposes than pine or tamarack; it is better timber for the mines. What we cut was mostly pine and tamarack, some fir at the Bonner Mill. In the Bitter Root it was mostly pine, and then a little tamarack, and way up the canyon, up that way, and on the hillside, they would get in quite a lot of fir. I have spoken about stumpage as bearing upon the market value obtainable for lumber. I know it to be a fact that during all this period, the Hellgate Canyon, from Bonita east, was being sawed indiscriminately—the land was not surveyed, and so mills were put in there; the timber all through that section was available. It was right on the line of the road, you know. The operations of

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Mr. Daly during the period I have spoken of, had some effect on the price obtained for lumber. One time we sold Mr. Daly quite a lot of this timber, and then he put in mills of his own and he used to buck us in the market and the prices went down; he put in a mill at Hamilton and one at St. Regis. I know the Montana Improvement Company was incorporated about 1882. I know that [199] from the time of the incorporation of the Montana Improvement Company, Eddy-Hammond & Company, the copartnership, ceased entirely to have any lumber operations. From that time on it was in the mercantile business, and that business was ultimately sold to the Missoula Mercantile Company, or the business was incorporated as the Missoula Mercantile Company. It was a partnership before, and then it became a stock company, and they took in a lot of the employees. The Montana Improvement Company took over all the lumber business of the Eddy-Hammond Company upon the incorporation of the Montana Improvement Company. I was mistaken when I said on my direct examination that Eddy-Hammond & Company sold the Bonita Mill to Fred A. Hammond; I should have said the Montana Improvement Company sold it to Fred A. Hammond. The Montana Improvement Company owned the lumber, and I was on the road. I didn't keep the books and my business was selling lumber and establishing yards. I was away most of my time. My understanding is that the Montana Improvement Company owned the mill at Bonita and sold it to Fred Hammond. At the time of the

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incorporation of the Montana Improvement Company and until it ceased to do business, shortly after the Government brought an injunction suit, Mr. Bonner was president of the company and he was the moneyed man of the outfit. Shortly before the formation of the Missoula Mercantile Company, in 1886, at that time, Eddy was around Bonita; he was up there looking after, I guess, the building of that mill, as I remember it. We shipped up the machinery and boilers from Thompson, and he was there seeing them installed, and the mill put up. That mill was established in 1885, and I think that is about the same year the Missoula Mercantile Company was incorporated. I think it was in the latter part of 1885. I [200] know it was not in the winter. I think that it was in 1885 that we first got an intimation of trouble with the Government, that is in the year '85. I know that they commenced actions against people down there in that section of the country. The Government commenced suit against us for one million and a quarter, for damages for cutting off the unsurveyed lands, and then on account of that, we had all this trouble. We had quite a lot of timber on hand, you know, yet we disposed of it all right.

Q. Now, then, Mr. Hathaway, I would direct your attention to the fact that the records of the United States District Court for the District of Montana, show that the suit was brought against you in the spring of 1886; you have testified that some months before then you anticipated trouble of that



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kind?      A. Yes, sir.

Q. Now, I will ask you, first of all, is that the litigation concerning which you have testified, that litigation I have mentioned?

A. That the Government brought suit against us?

Q. Yes.      A. Yes, sir.

Q. Some months before that suit was brought, isn't it a fact that the Montana Improvement Company ceased to be an active concern and was in a condition of liquidation?

A. Yes, when we found out that that was going to take place, we sold off our yards and cleaned up our stuff down there and disposed of the properties to Cannon and Brittle, of Spokane.

Q. Now, having refreshed your memory as to those [201] dates, we would like to ask you if you think your testimony was correct when on direct examination you stated that the cut of this mill at Bonita was sold to the Montana Improvement Company or to Eddy-Hammond & Company?

A. Well, it is like this: when we found we had suit against us, we got out of the business as fast as we could; there was a new company organized, the Big Blackfoot Milling Company; there was explicit orders to buy nothing from anyone that got any timber off of unsurveyed land; that new company never did it. I had forgotten that, because, I tell you, in 1887, you know, we kind of stopped then; we didn't do much; the Government was after us and in 1887 when they started that Bitter Root railroad, why I was six months away from the company altogether

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working on the railroad myself.

(Witness Continuing:) A. B. Hammond was the head man contracting in connection with that railroad and most of his time was consumed in building the railroad. There was two branches; one was the Bitter Root and the other was the Phillipsburg branch; I was the bookkeeper, keeping check on both work and when the road was practically completed, they got me to take a contract to build ten miles up the Bitter Root. As to who was running the lumber business of the concern that I have testified about as existing at that time, when Mr. Hammond was away—whenever I could get any time I used to go out on the road, but I couldn't very well, and the business was kind of dull, and the yards that were through the country here sent in orders to the mills, and then a man by the name of Winstanley, that was our bookkeeper, he attended to most of it; he kept the books, and made out the bills for the Big Blackfoot Manufacturing Company, and most of [202] Mr. Hammond's time was taken looking after these railroads and subletting the contracts; he had a contract to build these roads, he and Mr. Bonner had, and they took most of their time at that. I did not mean to say that the Big Blackfoot Milling Company was incorporated immediately after the Montana Improvement Company was enjoined. The Montana Improvement Company was enjoined in 1886, and the Big Blackfoot Milling Company was incorporated after 1891, but the Blackfoot Milling and Manufacturing Com-

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pany was incorporated in 1888. As to the Bonita Mill, I took the inventory myself in connection with the deal between Mr. Fenwick and Fred Hammond. I know, as a matter of fact, that the deal was just what it purported to be, that is, a straight out and out absolute transfer from Fred Hammond to George W. Fenwick, and I took that inventory, and to the best of my knowledge, the deed from the Montana Improvement Company (I have corrected my testimony and said it was the Montana Improvement Company and not Eddy-Hammond & Company) to Fred Hammond, by which he acquired the so-called Bonita Mill, was to the best of my knowledge, an absolute transfer, just as it purported to be, because Fred Hammond was there and owned the property. I don't recollect the time that Mr. Fenwick took over that property from Fred Hammond. I don't remember the date. I remember the fact that I was up there and took the inventory, and figured up and found out how much stuff was there, and Fenwick took it and paid for it. I don't know how long Fred Hammond operated that mill. It is a long time ago. I cannot recollect exactly how long he did operate. I know that Fred Hammond bought it from the Montana Improvement Company very soon after they brought it down there. Eddy was up there some little time, and then Fred Hammond made the deal and bought the mill; it was his mill and he sold it. [203] The Montana Improvement Company didn't run that mill for more than a month or two—only a very short time—they started

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building the mill, they had to build bunkhouses and stuff like that in there, some little lumber went for that, and then Fred went in and took charge and bought it. The Montana Improvement Company's office was right off the office of the Eddy-Hammond Company and the Missoula Mercantile Company, my memory is at that time it was down where the clothing store is; in the rear of the building and was right above where McLeod's private office is now. I think there was an outside stairway, separate stairway. It came down on the side stairs; they have rearranged that building though since then. I made a mistake when I testified that the mill at Bonita sold its product to the Blackfoot Milling and Manufacturing Company. The fact was that they sold direct; that was after the Government got after us for cutting on unsurveyed lands; the Montana Improvement Company, they unloaded their holdings; we didn't do any more business, we kept out of buying from mills that cut on unsurveyed lands; that was our instructions; but I was going to say further here, the Montana Improvement Company, while it ceased to do any more new business, they had on hand, my recollection is, in some of these old yards, lumber that was stocked and piled, had not been sold, after these Government suits were instituted, and that belonged to the Montana Improvement Company, as you said about the annual statements in 1897 or 1898, I think the Company had lumber for many years afterwards, it was hard to sell, you know, the remnants of a yard; there is lots of unsalable lumber left in it. My under-



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standing of the law is, that under the laws of Montana, the directors of a company, or trustees of the [204] company, have to file a statement annually, in order to avoid certain liability. I know that they have to file an annual statement; all incorporated companies have to do that. I don't positively remember when the Montana Improvement Company sold the last of its sawed lumber; I know there was some lumber at a place called Eddy for quite a number of years.

Q. It was enjoined, we will say, in the beginning of 1886?

A. I don't know. I know there was a suit brought against the Montana Improvement Company for damages for the amount of \$1,250,000.

(Witness Continuing:) I don't know whether it was an injunction suit or not; the suit was brought and they said they were going to put us in the pen, and you bet that stopped our work. With reference to the stockholders of the Big Blackfoot Milling Company, when it was incorporated there were some people took stock in that that had not been in any previous company; I don't know how many; but when it was incorporated, I know I got more stock. I did not know really who did have all of the stock; I know that the principal stockholders were the four I mentioned this morning, that is, Bonner and the two Mr. Hammonds and Mr. Eddy. I knew for a fact that W. H. Hammond had no interest whatever in the Montana Improvement Company at any time.

(Deposition of Thomas G. Hathaway.)

Redirect Examination.

Q. Mr. Hathaway, who handled the output of the Bonita Mill from the time that the Montana Improvement Company ceased its active operations until the Bonita Mill was closed down? [205]

A. This morning I made a mistake when I made that statement; I didn't keep the books, but now it has come to my memory, and it is a fact, it will show of record, you will see yourself, Mr. Fenwick billed direct his lumber; we couldn't touch anything that was on unsurveyed lands; he billed the lumber to the party that gave him the order.

Q. Did he bill any directly to the different yards that were then in existence of the Montana Improvement Company?

A. Sold to those yards on the outside?

Q. Yes.

A. Those yards on the outside were afterwards separately incorporated stock companies by themselves.

Q. I am asking about this particular time immediately following the time that the Montana Improvement Company ceased its operations; did Fenwick bill direct those yards?

A. If he sent any lumber there he billed direct.

(Witness Continuing:) I presume there was lumber sent to those yards, and I am pretty sure there was lumber sent, but those yards were in independent charge at that time, and the Helena Lumber Company, I had stock in it myself; it was incorporated; they bought out Hartwell and Edgar. As to when

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they bought out Hartwell and Edgar yard, that yard was established after the railroad got through, late in '83 or perhaps early in '84. They run a short time and didn't make a success. Mr. Edgar was a relative of Mr. Bonner, and they then sold out and the company was started there under the name of the Helena Lumber Company.

Q. Who owned the stock in the Helena Lumber Company? [206]

A. There was some of the employees in there; I held some stock myself and a man named Hopkins, and I think Mr. Coombs had some, and other parties.

Q. Did A. B. Hammond have any?

A. I think that A. B. Hammond might have had some,—yes, he had; I am not sure.

Q. How many of these outside yards to which the Bonita Mill was billing lumber directly did A. B. Hammond have an interest in, and name the yards.

A. I cannot say that they billed any lumber; he had no facilities for manufacturing lumber.

Q. Didn't you testify a while ago that after the Montana Improvement Company ceased to take the product from the Fenwick Mill that Fenwick billed lumber directly to these various yards established by the Montana Improvement Company?

A. I said he sold these yards; I cannot say positively, but I think he did sell.

Q. How many of these yards to which you think Fenwick billed this lumber were owned by the Montana Improvement Company?

A. They were independent incorporations, except

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the one at Great Falls.

(Witness Continuing:) I think A. B. Hammond had an interest in the Helena yard, Bonner owned the Deer Lodge Yard, M. J. Connell owned the Miner's Company in Butte; there were yards that were friendly to us; sometimes they would buy outside, they could buy where they saw fit. Hammond did not have any interest in the Miner's Lumber Company in Butte at that time. He acquired his interest in that, I think, it was in 1897. I said on my cross-examination that I took the inventory in connection with the deal made between Fred A. Hammond and George W. Fenwick when the Bonita Mill was sold by Hammond to [207] Fenwick. I did this at the solicitation of Fred Hammond. Fred Hammond—they wanted me—I went up there—I was sent there to take the inventory and ascertain the value. I cannot say who sent me, but I know I was there and I took the inventory. I don't know positively whether A. B. Hammond sent me there or not. I think Fred Hammond wanted me to come there. I cannot say what, if anything, A. B. Hammond had to do with the sale from Fred Hammond to Fenwick of the Bonita Mill. He might have had something to do with it, for all I know. I know that Fred Hammond and I had worked together, and he knew me, and when they talked of the trade, Fred Hammond, it was my business, as a rule, to go around these different yards and inventory, and knowing that business, why he suggested I should come there and I come there and took the inventory. I don't know



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that A. B. Hammond had any interest in the Fenwick Mill after it was purchased by Fenwick. I couldn't say that he didn't have any; I couldn't say more than what appeared on the surface. I would say no, he hadn't any. The place was there and the price agreed on and the sale was consummated. I never stopped to see how it was wound up; I made the inventory and that was the value of the property. I don't know whether A. B. Hammond derived any profit from the timber that was sawed by Fenwick after the transfer from Fred Hammond to Fenwick. I only know this, that Fenwick was comparatively a poor man when he went in there and bought that mill out, and he didn't make so very much money, and in fact no mill man could make money in those days. I don't think there was much profit to divide, if any. I believe it wouldn't amount to anything. There was no money in the milling business. I don't positively know whether or not A. B. Hammond had any interest in the [208] Bonita Mill, but I am almost sure that he didn't, from the fact that Fenwick bought it; that would be between Fenwick, and as to A. B. Hammond, I know nothing about it. Fenwick was a poor man, comparatively speaking; he had something, but the lumber business there, there would not be much to divide anyway at that time. I did not see the purchase price passed from Fenwick to Hammond for that mill. It was like this: I didn't know how they fixed it. I know I made the inventory, and there was the value of the property. I left it there. As to whether it was conveyed by a deed or any instrument

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in writing, I don't know anything more about the deed than I took the inventory. There was the value of the property, the horses and the stock and the mill, the timber on hand, and everything was down there on the ground. I don't know of the entry, if any, that was made in the books of the Missoula Mercantile Company leading to the transfer of the Hammond Mill from Fred Hammond to George W. Fenwick. You will have to ask the Mercantile Company.

Q. Do you know of any that was made in the books of the Montana Improvement Company?

A. There must have been an entry there because we sold the property.

Q. I mean from Hammond; when the transfer was made from Fred Hammond to George W. Fenwick, was there any record made of it in the books of the Montana Improvement Company?

A. No, sir; why should there be? It was between them two.

Q. I am asking you if there was?

A. I couldn't say; I didn't keep the books.

Q. Do you know where Fenwick received or procured [209] the purchase price that he paid to Hammond for the mill?

A. If you were in this country at that time, you would find there was no money in this country, everything was done on jawbone.

Q. I want to know what sort of an entry was made, or what sort of consideration was given?

A. Well, now, for value received, I suppose so, I

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don't know. I made the inventory of it. I went up and took an inventory of the stock on hand, all the plant; there was so much value in black and white, and they agreed among themselves.

(Witness Continuing:) I cannot recall from memory what purchase price was paid. I don't know; nor can I recall how the price agreed upon was paid; I know Hammond went out and Fenwick came in and Fenwick was it.

Q. Do you want to be understood now to say that there was no timber received by the Montana Improvement Company from the Fenwick Mill after these suits were brought against the Montana Improvement Company?

A. That I couldn't say. I know that we stopped, and my orders were this: to go and sell out and clean up and I went out and sold and cleaned up. I was away. I sold the yard in Spokane.

(Witness Continuing:) I don't know whether there was any lumber delivered by Fenwick to the Montana Improvement Company after its suit; there was no lumber delivered by Fenwick to the Blackfoot Milling and Manufacturing Company. This morning I made the statement that business was done there, [210] but recollect this: I know there was positive orders given, on account of these suits, that no lumber should be bought from mills that cut on unsurveyed land. And we complied with the law.

Tuesday, January 21, 1913.

**[Deposition of Thomas G. Hathaway, for Plaintiff  
(Recalled).]**

The deposition of THOMAS G. HATHAWAY, a witness recalled and sworn on behalf of the plaintiff, was offered and read in evidence by the plaintiff, as follows:

**Direct Examination.**

I am the same Thomas G. Hathaway who was sworn and testified in this case on the part of the plaintiff before A. A. Pelletier, a notary public at Missoula, Montana, on August 6, 1912. Since I testified before, I have stated to you that I desired to correct my testimony in one particular. This was in reference to who instructed me to take the inventory made by me at the time of the sale of the Bonita Mill from Fred Hammond to George W. Fenwick. When I was asked the last time when I testified, I said I got my instructions from F. A. Hammond. I find after thinking it all over that I was wrong. The facts are these: Fred A. Hammond spoke to me. I had met him sometime—asked him how things were going along. He seemed to be worried, when he said he wished he was back to Spokane and told me about the troubles he had at the mill. I had heard of their troubles outside, of the troubles he told me about, and afterwards when I met Mr. A. B. Hammond, I told him about Fred and about the trouble, A. B. Hammond said that Fred was to blame himself for most of his trouble; he intimated that he should be satisfied and that he himself was the cause of his



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troubles. Well, then, nothing was done at that time, and then I thought it had been from him that I got the instructions from. I could not satisfy [211] myself afterwards that I got it from F. A. Hammond, and then it came to me, something that came up, that I know that I could not have gotten it from Hammond, because about that time George W. Fenwick and F. A. Hammond were not very good friends, that is, F. A. Hammond thought he had a grievance against him; I knew he could not have spoken to Fenwick about the sale; then I recollected, I knew then my instructions must have come from A. B. Hammond, because I was at that time working under him and he was my boss, and I know that he had instructed me, but I cannot remember. It is just like this, he can himself tell if that is so or not. I am positive in my own mind that they were not from Fred Hammond, and I wanted my testimony changed because it troubled me. I went and seen this gentleman (Mr. Hall), and I told him I thought that was a mistake. And I want my testimony corrected. Here is the fact: Fred Hammond when he met me seemed to be worried. I had heard of some trouble occurring up there at that mill other than what he told me; he did not speak about this trouble, but it was well known, I found out by A. B. Hammond afterwards when I went to see A. B. Hammond. He said Fred was really to blame. The trouble was this, I do not care to say about it, but here is the facts. It was a case of ill-feeling between Fred Hammond and Mr. Fenwick. It was a per-

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sonal trouble and does not relate to this case at all, but it was the cause of his selling out and it was the cause of some of his feeling at Fenwick. I know from that that he did not make the deal with Fenwick. I am positive when I spoke to Mr. A. B. Hammond, he said Fred was to blame, and at that time nothing was done. Afterwards I got my instructions and I went up to the mill, and I met up there Mr. Fenwick, and we [212] went over the stock carefully and Mr. Fenwick and Mr. Hammond then agreed on prices, and Mr. Fred Hammond I remember was glad to get out at the time, although he did not get a very big price. I am therefore positive that instructions to take the inventory of the Bonita Mill preparatory to negotiating the trade between Fred A. Hammond and George W. Fenwick came from A. B. Hammond. I don't know exactly the financial condition of George W. Fenwick at that time; I did not think he was very well off. As to how long Mr. Fenwick had been in the employ of the Hammond people prior to the time he bought the mill from Fred A. Hammond, my recollection is he came out after the railroad came in, that would be in '83; it was in '83 and he was located on what is now called Clinton and was then called Wallace, and had charge of a lot of lumber yards, that is, he was shipping a lot of lumber that was owned there by the Montana Improvement Company. That was his first business. I would say he was acting as shipping clerk. Before this occupation, prior to the time he came to Montana he was a teacher in the

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high school in Fredericton, New Brunswick. As to whether he had any property to any extent in New Brunswick or in the state of Montana, prior to the purchase of the mill at Bonita, I don't know, I never asked him. As to the instructions or directions I received under which I went back to Minnesota and employed men to come to Montana—I was working for the Montana Improvement Company, and received wages from that Company, I know up until '87, and I think I went back in '86 and my boss was A. B. Hammond. I went back twice and I am not exactly sure whether it was in '86 or '87 I went back the first time; I went back once, and if I remember right, went back again and got a whole lot of men. I know A. B. Hammond sent me back the first time, and I [213] guess the second time, for all that, but I think it was in '86 and '87—I know I went twice. I know the first time A. B. Hammond gave me the instructions to go back for these men. The second time I do not recall. The first time I remember distinctly; he told me—well, men were scarce in the country and the mills were short and they were pretty independent and pretty hard to keep and I went back there. I remember distinctly of getting a letter—there was some parties back there—to help me out and I went back there and hired the men at a place called Stillwater, Minneapolis and St. Paul and up in Duluth. The first lot of men that came out went to work for a man by the name of Haycock. He had a mill up here near the Marshall Grade, and when the men came, there had been a strike there and

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the men went to this Haycock Mill, the first batch of men. I guess afterwards some of the men went to Bonner or the Bonita Mill—the first batch went to Haycock Mill. I think my services as salesman and general manager for the Montana Improvement Company ceased in 1887. I could not say whether I sold any lumber for the Montana Improvement Company after 1887. The reason I say '87 is because in '87 the Bitter Root branch was built, and I was employed on that end. I was keeping books also for the Drummond road, and afterwards, when they extended the Bitter Root branch, I had a contract and I think that was in 1887. I never sold any lumber for the Missoula Mercantile Company. The Missoula Mercantile Company, to my knowledge, never owned—they used to sometimes considerably back mills for the sake of trade. As to the financing of George W. Fenwick by the Missoula Mercantile Company, in his operations of the Bonita Mill, it is my belief that Fenwick paid his men and got his supplies from the Missoula Mercantile Company; [214] had an account with them. I don't know, of my own knowledge whether or not A. B. Hammond and Henry Hammond supervised or controlled the operations of the Bonita Mill while it was owned by George W. Fenwick. I believe that A. B. Hammond wanted to help his relatives and that certainly when Fenwick was there whatever Fenwick would make, it would be a pleasure to him. That is my honest, candid conviction—further I don't know. I don't hardly think A. B. Hammond was advising,



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superintending and directing the operations of the Bonita Mill when it was owned by Fenwick. I don't know about it. I don't think so. I think that he wanted Fenwick to do well and I think he wanted Fenwick to buy it, as far as that is concerned, I think he wanted Fenwick to make something—it was always his way of doing business, to put his relatives in and give them positions where he could assist them in any way he could. I naturally suppose he did that to Fenwick in this case. I think really he helped Fenwick to acquire that mill. Fenwick can tell you about that better than I can.

#### Cross-examination.

As far as I know, Mr. Fenwick ran his own mill. I never was there very often. I know he had lots of grief. The Haycock Mill I have spoken of, was not situated on the Blackfoot River, it was three miles east of Missoula, where the brick yard is now. A man by the name of Haycock had it; it was on the Hellgate River, below the mouth of the Blackfoot River; no logs came down the Blackfoot for that mill. That mill was not connected with the Montana Improvement Company, or any of the other corporations. About my going East and getting men to come out here and work, I [215] know it was a proposition necessary for the good development of this country. Men were scarce and lumber was low and it was hard to keep them and I was sent East. I got my first lot of men in Minneapolis. I brought out, I guess, almost pretty nearly three hundred men both trips. Lots of these men found employment in

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other places besides Bonita and Bonner Mills and logging camps connected with them. Some found employment in the store, but the main body of men I sent were lumbermen, lumber-jacks, good timber men. I am almost positive that A. B. Hammond sent me to make the inventory and transfer from Fred A. Hammond to George W. Fenwick of the Bonita Mill property. That is one thing A. B. Hammond can tell you himself, if he says it ain't so, you can take his word for it. I am positive they emanated from that office, from him. I told Mr. Hall that I wanted to be put on the stand to correct that part of my evidence, because I now think it was incorrect.

Q. Would you not like also to correct your evidence in this particular: Don't you know it to be a fact that when Fred A. Hammond took over the Bonita Mill from the Montana Improvement Company, he sold whatever lumber he manufactured there himself and not through any other company, firm or organization?

A. But that is a long time ago. I cannot remember. I find I made a misstatement the other day. I am positive in my own mind that Fred Hammond could not have sold any of the lumber manufactured by him to the Montana Improvement Company. I remember now, it comes back to me, that our orders were to close out all this business. That is one reason why the mills—I think were sold to Fred and the [216] Company got clear of it. I was sent myself, also, to these yards down in that country, down in Washington, to clean up all the property I could

(Deposition of Thomas G. Hathaway.)

there, and I am positive that Mr. Fred Hammond sold none of his lumber to the Montana Improvement Company. It sold nothing but our own lumber.

Q. In reference to Mr. George W. Fenwick, are you not also positive that while he was operating the Bonita Mill that he sold his own lumber?

A. I know, yes—I did not know the other day, but it is twenty-six years ago, and I cannot remember; this I recalled afterwards. I did not recall it until I was told by Henry Hammond, then I recalled it. It came back to me again, and I remembered, but I cannot retain that length of time. I haven't a good memory anyway. [217]

**[Deposition of Thomas Welch, for Plaintiff.]**

The deposition of THOMAS WELCH, a witness called and sworn on behalf of the plaintiff, was offered and read in evidence by the plaintiff, as follows:

**Direct Examination.**

I reside at Hamilton, Montana: I think I am 57 years old. By occupation I am now a gardener. I was once engaged in cutting or hauling timber in the vicinity of the Bonita Mill. I was first employed there I think it was about the latter part of April, or first of May, 1886. The way I came to be employed in that work was this: I think there were four or five of us came in here from the east and we were sent up there by Mr. A. B. Hammond. Mr. Hammond said for us to go up there. He did not know whether we would be needed or not, but to go

(Deposition of Thomas Welch.)

up there and see Fred Hammond. So we went up and Fred Hammond employed me. He employed me to work on the slip putting up logs into the mill. I continued at that work until they shut down for that log war; I guess it was some time in October of that same year, 1886, that the log war occurred. By the log war I mean that two parties got striving there to see who would get the logs. I understood the Hammond Company was one of those parties and Joe Irvin the other. I never at any time after I went to work at Bonita had any conversation with A. B. Hammond in regard to work. I received my instructions and directions from Fred Hammond while he was there. After I quit working in the mill we went to work up in the timber, up in the log war. All I know as to the description of the land over which they were warring at that time is that it was *called Gulch*. I think I was engaged in cutting and hauling logs out in the Cramer Gulch until February some time. At the time I was working there in the Cramer Gulch Joe Irvin placed a mill in there, that was my understanding it was Joe Irvin. With reference [218] to the Cramer Gulch, the Irvin mill was located on the right hand or main branch we called it of the Cramer Creek, maybe 60 or 30 or 40 rods probably above the forks of the creek. One branch went to the left and the main branch as we called it went to the right. Where the Cramer ranch house was I was familiar with its location. We used to call it the old Newman place or Cramer. I should say that the Irvin mill was



(Deposition of Thomas Welch.)

situated over a mile above the Newman or Cramer ranch house. I couldn't give you any estimate at this time of about the number of feet of log measure that I took out of the Cramer Gulch.

Q. Did the Irvin people,—or which direction from the Irvin mill were the logs taken that were sawed at the Irvin sawmill?

A. Well, they were to the right of the mill going up the creek; the creek runs like this and the mill sets here. It was up to the right the principal part of it, and on the bottom below the mill, below the forks of the creek some were taken out.

Q. Who took from the forks of the creek down? Who took the principal part of the timber that was cut off Cramer Gulch?

A. I believe it was the Hammond Company.

Q. Who do you mean by the Hammond Company?

A. Well, it was one time—I believe it was the Montana Improvement Company and then it changed to Eddy-Hammond three or four different titles.

(Witness Continuing:.) Some of the logs that were cut south of the Irvin mill went to the Irvin mill and some of them came down to the Bonita mill. [219] I presume Fenwick was my immediate foreman when I did the cutting there in Cramer Gulch. The Irvin mill was also known as the Thompson mill. After we finished cutting in the Cramer Gulch I was sent to Bearmouth with a team in February of that year—sent to work at Little Mill up in there back of Bearmouth. At one time I cut timber out of the first gulch that lies east of Cramer Gulch. It must

(Deposition of Thomas Welch.)

have been in the fall of '87 that I logged out of there and the logs went to the Bonita mill which was then in charge of George W. Fenwick. I cut timber off lands adjacent to where the Fenwick mill was located south and west of the river. I was familiar with the gulch called Welsh Gulch or Gillespie Gulch. I presume they were one and the same. It must have been in '88 that I cut out of the Welsh Gulch and these logs went to the Bonita mill as far as I know. I had a verbal contract with these people to cut timber; that agreement was with George Fenwick and under that agreement I cut south and west from the mill and likewise in that first canyon east of Cramer.

Q. Were you familiar during the years '87 and '88 when you were working there with the prices that were paid for delivering those logs at the mill?

A. Well, there was a stated price for the delivery at the mill.

(Witness Continuing:) The price was \$5.00 per thousand. I was not familiar with the market value of the lumber after it was sawed. Under my agreement with Fenwick we got \$5.00 per thousand at the mill, and there was two or three different prices for skid logs at the mill. There were two or three I think there were three or four prices according to the distance. I think one was as low as \$2.75. [220] I couldn't be certain but I think it ranged from \$2.75 to \$4.00.

Cross-examination.

Q. The country as to which you testified has been

(Deposition of Thomas Welch.)

largely denuded cut over and timber has been taken away has it not?

A. Every place that we went there somebody had been there ahead of us cutting timber, roads, and stumps, logs—somebody there ahead of us. I would find it a difficult matter at this time to designate any particular acreage or area over which the people I worked for had cut. I wouldn't be safe in that. I couldn't designate any block of ground anywhere that was cut over by the people I was working for; I am just giving you the principal points where we worked, gulches. Nor can I be certain as to the locality which was cut by one mill as compared with the locality which was cut by another mill at that time. I couldn't unless I was on the ground and I have not been over the ground recently—not since I was there in 1894. Not for any search or anything of that kind. I might have accidentally been over it but I cannot recall being over it. I think it was April, 1886, that I first went up there. I am sure Fred Hammond was there at that time. Mr. Fenwick was not there when I went there first. I think he arrived there about the middle of August. I am sure that Fred was there on the 4th of July and I think he had charge of the 4th of July celebration. We had a dance the 4th of July; I remember Fred was there; I think he was in charge of that mill. I remember Kenneth Ross being there while I was there—he was not working there though when I went there in April the man in charge of the woods was I think Bill Harley he had charge of one camp up

(Deposition of Thomas Welch.)

the river, and on Cramer Creek I understood that had been run by Ross, but it was broke up, [221] that camp was not running; that had been run by Ross the winter previous. I never had any conversation with A. B. Hammond except the original conversation which resulted in my looking for employment up at Bonita—that is to say not any more than to pass the time of day when I would come down here sometimes. At this date I couldn't state how far I did cutting up Welsh Gulch; it might have been over a mile, it might have been nearly two miles but I couldn't place it; I should say it was in the neighborhood of two miles somewhere there around about. It was in the fall of '87 somewhere around there that I made this contract with Mr. Fenwick. They had the logs left from the log war which was brought from the divide between the Cramer Gulch and this Little Gulch east of the Cramer Gulch, some old logs that was brought there and couldn't be brought over to Cramer and was brought and landed on the top of the divide between those two benches. There were not very many but there was quite a few and he and I talked about me going in there and getting those logs out of there. Under the terms of the agreement he was to give me \$2.00 a thousand for bringing those old logs down to the foot of the hill where they could get them with trucks. I did not have to load them on trucks. He took them. I put them at the bottom of the hill. That was the only contract or arrangement I had with Mr. Fenwick except that we were then to go on and clean the



(Deposition of Thomas Welch.)

ground. I have testified something about \$5.00 a thousand being paid for delivering logs to the mill. I got paid this from Mr. Fenwick.

Q. Was that another contract then?

A. That was according to the amount of work you put on the logs. If you delivered them to the mill you got \$5.00; if you put them down at the foot of the hill that was as low as [222] \$2.75 for new timber.

(Witness Continuing:) I am now giving you the the price that was included in that one contract which I had with Mr. Fenwick. There were special prices for the different amount of work that you did on the timber and I did take some down to the mill itself and was paid \$5.00.

Redirect Examination.

I was not familiar with what it would cost to saw the logs. As to the date when the Fenwick mill shut down I haven't got it. I would say at random it was sometime before the Pullman Strike and the Coxey Army. If the Pullman Strike was in 1894 then the mill was closed down before that. I know I was there watching the mill when the Coxey people went there; nothing doing there then; the mill was vacant and silent and this also was the case in the Pullman Strike.

**[Deposition of Gust Moser, for Plaintiff.]**

The deposition of GUST MOSER, a witness called and sworn on behalf of the plaintiff, was offered and read in evidence by the plaintiff, as follows:

**Direct Examination.**

I reside at Saltese. By occupation I am an attorney at law. I have lived about thirty-one years in the State of Montana. I was at one time employed by the Missoula Mercantile Company. I first went to work for them in 1887 as credit clerk and then about 1889 I was made secretary and also credit clerk of the corporation known as the Missoula Mercantile Company. When my first employment began the firm of Eddy-Hammond & Co. had passed out of existence. As secretary and credit man of the Missoula Mercantile Co. I had charge of the books of the company and looked after the collections and after their stock books. [223] A. B. Hammond was in immediate charge of the business. I received my instructions and directions from him and Mr. McLeod, the manager. I was acquainted with George W. Fenwick in 1887. At that time I think he was running a small mill at Bonita. I cannot say whether or not A. B. Hammond had any interest in the sawmill that Fenwick was running at Bonita. My company carried an account with Fenwick at that time. I suppose the account between the Missoula Mercantile Co. and Fenwick was opened and carried at the suggestion of Mr. Fenwick or Mr. McLeod. I couldn't say which one. I could not say whether the Missoula Mercantile Com-

(Deposition of Gust Moser.)

pany received from the mill at Bonita and from Mr. Fenwick any of the lumber that was being manufactured during the years '87, '88, '89 and '90. Mr. Hammond had an interest in the Missoula Mercantile Co. from '87 onward. I never was connected with the Montana Improvement Co. I was connected with a company known as the Blackfoot Milling & Manufacturing Co. My connection with that company commenced about 1889 I should judge. I was secretary, that is a nominal secretary, I would say; kept the stock books down here in Missoula and service of papers was made on me.

Q. Were you familiar with the transaction or transactions by which the Blackfoot Milling & Manufacturing Co. acquired any property or interest from the Montana Improvement Co., if it did acquire any property or interest?

A. No, sir. To my knowledge and belief the assets of the Montana Improvement Co. were turned over to the Big Blackfoot Milling & Manufacturing Co. but the books were all kept at Bonner, that is all transactions, and I knew nothing about it.

Q. Do you know what assets the Montana Improvement [224] Co. had that were turned over to the Big Blackfoot Milling & Manufacturing Co.?

A. I couldn't say now. That was a good many years ago. I think they had some lumber and they possibly might have had a mill or two but I couldn't say, I knew nothing about these transactions.

Q. Who was in charge of the business of the Big

(Deposition of Gust Moser.)

Blackfoot Milling & Manufacturing Co. after it came into existence?

A. W. H. Hammond was the General Superintendent and Manager: A. B. Hammond was the President.

Q. Did you ever at any time hear Mr. A. B. Hammond give any directions and orders in regard to conducting of the business of the Blackfoot Milling & Manufacturing Co.?

A. I have heard him talk to Henry Hammond about the price of lumber and the price that they should pay for the cutting of logs and things of that kind but I couldn't say what the prices were that were set but I know that they talked it over right in the Missoula Mercantile Co.'s office every time that Henry Hammond came down.

(Witness Continuing:) I never heard any conversation between W. H. or Henry Hammond and A. B. Hammond in regard to the source from which they were obtaining that timber. I was the nominal secretary of the Big Blackfoot Milling Co. I never received any salary for it. I remember that there was a transfer of the property and holdings of the Blackfoot Milling & Manufacturing Co. to the Big Blackfoot Milling Co. The transfers were made by Mr. Thomas Marshall, the attorney, and I couldn't say just what the transfer was. I cannot recall the consideration that was given the Blackfoot [225] Milling & Manufacturing Co. for the transfer of its holdings and property to the Big Blackfoot Milling Co. It seems to me that it was about \$600,000, but



(Deposition of Gust Moser.)

whether that is the exact amount of the capitalization or not I cannot state. As to whether I know how that consideration was paid, I expect it was simply a transfer of stocks from the new company for surrendering the stock of the old one, that is my recollection. I don't know who owned and operated the Bonner Mill in 1886 but in 1887 my recollection is that it was the Big Blackfoot Milling & Manufacturing Co. I did not ever know of the Blackfoot Milling & Manufacturing Co. handling any of the product that came from the Fenwick Mill at Bonner. I have no knowledge whatever of the lands from which any of the Hammond interests cut timber during the time they were operating. I can name a few of the stockholders in the Montana Improvement Co., namely E. L. Bonner, R. A. Eddy, A. B. Hammond and a man by the name of Robinson. I was never employed by the Montana Improvement Co.

Cross-examination.

There might have been other stockholders in the Montana Improvement Co. but the names given are the only owners I now recall. I remember that A. B. Hammond went to the coast and also went to Europe in '92 and went into that Astoria deal in Oregon. We didn't see much of him after 1892—we saw very little of him. As to how much we saw of him between '89 and '92 I couldn't say positively, but I do know that after 1892 we saw very little of him; he went to Europe and did not get back until along in October and then he got interested in that Astoria

(Deposition of Gust Moser.)

deal and then down on the coast; he was away most of the time, of course, he made frequent visits to Missoula. [226]

### Redirect Examination.

He certainly kept in touch with the business at that time.

### [Deposition of Robert L. Harper, for Plaintiff.]

The deposition of ROBERT L. HARPER, a witness called and sworn on behalf of the plaintiff, was offered and read in evidence by the plaintiff, as follows:

### Direct Examination.

I reside at Hamilton. My occupation is lumbering—a sawmill. I cut and manufacture it. I have resided in the State of Montana since February, 1888. I first got acquainted with George W. Fenwick when I came to his plant in February, 1888, that is where I worked when I came to Montana. It was at the Bonita Mill. At a later date I had a verbal agreement for cutting and hauling logs with Mr. Fenwick. He told me he would give me so much for such logs if I would get them down off the hill where he could get to truck them. To the best of my recollection, it was in November, '88, I had this contract with Mr. Fenwick, and I probably commenced work under it the first of December. I think it was \$4.00 I was to receive for hauling the logs and putting them where he could get the trucker. My work included both the cutting and the skidding of them. I am not familiar with the section lines and the sections as surveyed out by the Government in the

(Deposition of Robert L. Harper.)

vicinity where I cut, but I am practically, not extra good, I think I know the local names applied to the gulches where I cut. The first cutting I did was in Little Gulch, between the Strong Gulch and the Cramer Gulch. At that time it was known as the Welsh Gulch. Welch had a camp on it. That gulch was on the north side of the Hellgate River—it would be east up the river from the [227] Welsh Gulch and on the north side of the river. The Cramer Gulch would be a little west of the gulch I was in. It was the first gulch east of the Cramer Gulch. I do not remember exactly how many logs I cut off and skidded out of that gulch, but I think it was somewhere between three and four hundred thousand. I am not positively sure, but it was somewhere in the neighborhood of that. My cutting extended a mile or a mile and a quarter from the river, or such matter as that; we fetched the logs between a half and three-quarters of a mile and then they trucked them, I expect, about half a mile. These logs were ultimately put into the river and went to the Bonita Mill. I am familiar with the place where Mr. W. K. Will's house is now situated. I cut a few logs in that vicinity, probably 100,000, or thereabouts, for Fenwick. I think it was in the neighborhood of 80,000 in that gulch that somebody had cut. I was told that Rich and McIntosh had cut them, and I put them down on the bank of the river. There was not in my time any particular local name given to that area where Will's house is situated. I don't know what section it was on. I received \$4.75 for putting these logs cut in the vicinity of Will's house

(Deposition of Robert L. Harper.)

on the bank of the river. I cut west of the Will's house, probably a quarter of a mile, maybe a little better, not much over a quarter, I don't think, for I just went up the hill; I didn't have no sleigh or truck. I just snaked them down. I didn't go very far. I was cutting a little east of the Will's house; it was probably a quarter of a mile east, not more than a quarter, along where Will's house is now, practically the hill back of the mountains. I was only in the one place; I just put them all on the one place; there was only just one gulch that they came out of. [228] There had been some timber cut there prior to the time that I was cutting; the fellows that cut this 80,000 or so that was left in the gulch had put some in, I don't know how much. They were cut the year before. I determined that they had been cut the year before by the way they looked, they were not very old logs, you could tell, the bark was still on them. There were no other places that I cut in the vicinity for Fenwick. I cut about 100,000 beside the old logs that was cut—probably 80,000, or thereabouts, in the vicinity of the Will's house, I don't recollect it just exactly. The amount that I cut and the amount that I skidded out of there was somewhere about 180,000. I was paid for my contracts there by Mr. Fenwick giving me a check, what we called at that time, a check on the Missoula Mercantile Company, and that was paid in cash, or in goods, by the Missoula Mercantile Company, accordingly if you had bought any goods beforehand, it was held out of you and the balance was paid in money.